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THE

MERCHANT'S LAWYER:

The LAW of TRADE in General.

CONTAINING,

An ABRIDGMENT of all the Statutes relative to

The East-India Company, | The South-Sea Company,
The Bank of England, | And all the Pub. Annuities,

Granted from the Revolution to the year 1761,

The Statutes concerning the AGGREGATE, GENERAL, and SINKING FUNDS;

The Law relative to BANKRUPTS,

Including the Statutes and Cases determined thereon;

An ABRIDGMENT of

All the Statutes concerning Money and Coinage;

The Law of Awards, with all neceſſary Precedents;

The Statutes and an Abridgment of all the Caſes determined, relative to Bills of Exchange, Promiſſory Notes, Bank Notes, and Inſurances;

The Law of Owners and Maſters of Ships, Principals and Factors;

AND

An Abridgment of the Statutes relative to the Cuſtoms.

TO WHICH IS ADDED,

A COMPLETE BOOK OF RATES.

The Second Edition corrected, with Additions,

Particularly a Preface, with a very intereſting Caſe, lately determined upon the Statutes of *Bankruptcy*, with the Arguments at large, of the Lord Chancellor, the Lord Chief Juſtice of the King's-Bench, the Lord Chief Baron of the Exchequer, and another Judge.

By T. CUNNINGHAM, Eſq;

In TWO VOLUMES.

VOLUME THE FIRST.

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PREFACE.

THE variety of matter collected in the following sheets under one view, relates to subjects highly interesting to a commercial kingdom, more especially to lawyers, merchants, and traders. The first head contains a concise history of, and an abridgment of the statutes relative to, the East-India company, from the 9 and 10 W. 3 to the 27 of Geo. 2. inclusive. This, with the second, third, fourth and fifth articles, are useful to all persons, who are desirous to have a clear and perfect knowledge of the nature of our public funds.

In the beginning of the following title are all the statutes *at large* concerning Bankrupts, and immediately after the cases determined upon them. By this method the reader will be enabled to peruse the acts of parliament without interruption, and may, if he thinks proper, make references in the margin to the adjudica-

tions

tions; but as it may often be neceſſary to have ſudden recourſe to this head for ſome particular matter, there is an Index to anſwer this purpoſe, and to point out to the reader both the ſection of the ſtatute, and the determinations upon it. In page 532 of the ſecond volume, begins the famous judgment in the caſe of *Ryal* and *Rowls*; of which, it is ſufficient to ſay, that here is a very accurate copy, and that the Editor hath taken particular care to add every thing requiſite to make it clear and intelligible to the reader. Beſides this, there are ſeveral other caſes that were never before printed, ſuch as *Bellamy*'s caſe, *Mico*'s caſe, *Obert* and others againſt *Williams* *Watts*'s caſe, *&c.*---proper indexes to the foregoing particulars, conclude the firſt volume.

The ſecond Volume begins with an abridgment of the ſtatutes relating to money and coinage; after which is the title *Award*, divided into the following ſections, treating----of what an award is, and what things may be ſubmitted to arbitration; who may ſubmit to arbitration; of the ſeveral kinds of ſubmiſſion to arbitration; of the arbitrators and their authority; of the award, and what ſhall be deemed a good award, and what not; of the effect, and execution of the award; of the action on, and pleading in, awards; form of a ſub-

ſubmiſſion by rule of court; an arbitration bond; condition to ſtand to the award of three arbitrators, or any two of them; and an umpire to be appointed; form of an award; form of an umpirage.

The next head is *Bills of Exchange*, which treats---of the origin and uſe of exchange; what a bill of exchange is, and the form and words neceſſary to be uſed therein; foreign bills; uſances; proteſts; inland bills; drawer; acceptor and acceptance; indorſer, indorſee, and indorſement; of bills payable to bearer; when payable; actions, declarations, and pleadings; venue; evidences; when intereſt and damages are recoverable; equity and injunction; when deemed payment; bills loſt, forged, and ſtolen.

The following head is *Promiſſory Notes*, treating---of their origin and form; of actions, declarations and pleadings; indorſements, indorſor, and indorſee; venue; evidence; equity, and injunction; ſtealing, forging, and loſing them; when deemed payment; matters not reducible to any particular head; of bank, caſh, and goldſmith's notes.

The title *Inſurances*, treats---of the nature of them; baratry, and deviation; policies in general; bottomry and reſpondentia bonds; actions; injunction; equity;

equity; insurances from fire; insurances upon lives.

The contents of the remaining heads, *viz.* Owners and masters of ships, principals and factors, customs, *&c.* are sufficiently expressed in the title-page; and this volume ends with an Index to the articles, *Bills of exchange*, *Promissory notes*, and *Insurances*.

East-India Company.

THIS corporation was originally formed towards the latter end of the reign of queen *Elizabeth*, as appears by their charter, which bears date in 1599: their privileges were renewed by king *James* I. and alſo by *Charles* II. in 1662, and confirmed by *James* II.

The ſubſcriptions, or ſhares, in this company, were only of 50 *l.* originally; and the directors having a conſiderable dividend to make in 1676, it was judged eligible to add the profits of the ſtock, inſtead of withdrawing them; whereby the ſhares were doubled, and from 50 *l.* advanced to 100 *l.* And it appears that in the year 1692, their joint-ſtock was 744,000 *l**.

The company ſuſtaining loſſes by the *Dutch* in *India*, and by the *Great Mogul*, began to decline at the revolution.—The war with *France*, put it into ſo deplorable a condition, that, appearing ſcarce poſſible to be ſupported, a new one was erected.

The riſe of this new company was occaſioned by the great caſe of the old one being taken into conſideration by the parliament, which caſe had been depending ſome years. On account of its intricacy, it had been firſt referred by the parliament to the king,

* Stat. 4 and 5, *W.* and *M.* c. 15. S. 10. A. D. 1692. There ſhall be anſwered to their majeſties, the ſum of 5 *l.* for every 100 *l.* of the joint-ſtock of the *Eaſt-India* company, the ſaid joint-ſtock being valued at the rate of 744,000 *l.* the ſame to be paid by the governor and treaſurer of the ſaid *Eaſt-India* company, by four equal quarterly payments; the firſt payment to be made upon the 25th of *March*, 1693, and to be deducted from the ſeveral perſons intereſted in the ſaid joint-ſtock, according to their ſeveral ſhares and proportions therein, upon their next dividends.

and by him back to the parliament, in the year 1698; when the old company offering to advance 700,000 *l.* at 4 *per cent.* for the ſervice of the government, in caſe the trade to *India* might be ſettled on them, excluſive of all others; the parliament ſeemed inclined to embrace their propoſals.

In the interim, however, another body of merchants, of whom Mr. *Sheperd* was the chief, and who were ſupported by Mr. *Montague*, chancellor of the Exchequer, propoſed to the houſe of commons to raiſe two millions, at 8 *per cent.* upon condition that the trade to *India*, might be ſettled on the ſubſcribers, excluſive of all others. They propoſed, alſo, that theſe ſubſcribers ſhould not be obliged to trade in a joint ſtock; but, if any members of them ſhould afterwards deſire to be incorporated, a charter ſhould be granted to them for that purpoſe.

The parliament judged this new overture not only to be more advantageous to the government, but alſo very likely to ſettle this controverted trade on a better foundation than it was on before: Wherefore a bill was brought in for ſettling the trade to the *Eaſt Indies*, according to thoſe limitations, and ſome further reſolutions.—In conſequence of which, the old *Eaſt India* company preſented a petition againſt this bill; which, notwithſtanding, was paſſed in favour of the new company, who obtained a charter of incorporation, dated *September* 5, 1698, by the name of 'The general ſociety intitled to the advantages 'given by an act of parliament, for advancing a ſum 'not exceeding two millions, for the ſervice of the 'crown of *England*.' Whereby the ſum total of all the ſubſcriptions was made the principal ſtock of the corporation; and the new company became inveſted with the ſame privileges, as were granted to the old company, by the charter of king *Charles* II. However, the old company was by the act, indulged with leave to trade to the *Indies*, until *Michaelmas* 1701.

The fund of this new company became ſo conſiderable, and ſubſcriptions were carried on with ſuch facility,

cility, that, in leſs than two years, the company put to ſea 40 ſhips, equipped for its commerce; which was double the number employed by the old company, in the moſt flouriſhing times of its traffic; and they ſent annually, at leaſt, a million ſterling in ſpecie to the *Indies*, whereas the old company had never ſent above 500,000 *l.*

The two companies ſubſiſted a few years in a ſeparate ſtate, when, having a due regard to their common intereſt, and for the preventing ſeveral inconveniencies that might otherwiſe have happened, both to themſelves and the nation in general, they agreed upon ſeveral articles for their union.

Accordingly, in the year 1702, a new charter of union was granted the two companies by queen *Anne*, under the name of 'The united company of mer-'chants trading to the *Eaſt-Indies*,' which was eſſentially the ſame with thoſe of king *Charles*, and king *William*; becauſe, by the union, they adopted all the regulations made for the government of the old company: ſo that the united company ſhould rather be deemed the old company continued, than a corporation erected upon a different eſtabliſhment. This charter being ſince expired, another with new powers, was granted them, till 1730; and, in the 17th year of king *George* II. was continued until the 25th of *March*, 1780; when, on three years notice, and repayment of the capital ſtock borrowed by the government, and the annuities, the company's right to the ſole and excluſive trade to the *Eaſt-Indies* is to ceaſe and determine.

To the 2,000,000 *l.* advanced by the new company to *William* III. the united company, in the 6th year of queen *Anne*, lent the government 1,200,000 *l.* which made their whole loan amount to 3,200,000 *l.* more; being what may properly be called the capital ſtock of the company: The firſt loan of 2,000,000 *l.* was ſecured by the government, out of the duties upon ſalt, and the additional ſtamp duties, granted in the 9th and 10th years of *William* III, chargeable

with the payment of 160,000 *l.* as a yearly fund for paying the intereſt at 8 *per cent.* But by the act of 3d of *George* II. this annuity of 160,000 *l.* was reduced to 128,000 *l.* and transferred as a charge upon the aggregate fund; and, in 1749, it was reduced to 3 and a half *per cent.* until *Chriſtmas* 1757, and, after that to 3 *per cent.* But, beſides this 3,200,000 *l.* there is a million more due by the public to this company, being lent by them at 3 *per cent.* in the ſaid 17th year of his preſent majeſty, as hereafter mentioned.

In regard to the œconomy and policy of this company, all perſons without exception, are admitted members thereof, as well foreigners as natives, men and women; with this circumſtance, that 500 *l.* in the ſtock of the company, gives the owner a vote in the general courts, and 2000 *l.* qualifies him to be choſen a director. The directors are 24 in number, including the chairman and deputy chairman, who may be re-elected for four years ſucceſſively. They have ſalaries of 150 *l.* a year each, and the chairman 200 *l.* The meetings, or courts of directors are to be held, at leaſt, once a week; but are commonly oftener, being ſummoned as occaſion requires.

Out of the body of the directors are choſen divers committees, who have the peculiar inſpection of certain branches of the companies buſineſs; as the committee of correſpondence, committee of buying, commitee of the treaſury, committee of warehouſe, committee of ſhipping, committee of accounts, committe of private trade, committee of the houſe, and committee to prevent the growth of private trade.

This company is not only granted an excluſive privilege of trade to the *Indies*, and other extraordinary conceſſions from the government, by their charter, but there are ſeveral acts of parliament made in its behalf; an abridgement of which, except ſome of thoſe that concern the duties on the goods imported by them, is as follows:

STAT.

1. STAT. 9 and 10. *Will.* 3. cap. 44. Sect. 46. From the 29th of September, 1698, the ſum of 160,000*l.* out of the duties upon ſalt, and the additional ſtamp duties granted by this act ſhall be a yearly fund.

2. Sect. 47. The ſaid yearly fund ſhall be paid without fee; and the officers of the Exchequer making default ſhall be incapable of ſerving his Majeſty, and forfeit double damages.

3. Sect. 48. His Majeſty may authorize commiſſioners to take ſubſcribtions for raiſing two millions, from natives, or foreigners, bodies politic or corporate (except the Bank of *England.*)

4. Sect. 52. Each ſubſcriber ſhall have an annuity of eight *per cent.* paid quarterly, the firſt payment to be at *Chriſtmas*, 1698. ſubject to redemption.

5. Sect. 56. His Majeſty may by letters patent, incorporate the ſubſcribers, their executors, adminiſtrators, ſucceſſors, or aſſigns, with perpetual ſucceſſion and a common ſeal, and with power to purchaſe lands, to plead and be impleaded, and do all other things by the name of their corporation, viz. "The general ſociety intitled to the advantages given "by an act of parliament for advancing a ſum not "exceeding two millions for the ſervice of the "Crown of *England.*"

6. Sect. 57. The ſum total of all the ſubſcriptions ſhall be the principal ſtock of the ſaid corporation, and all perſons ſhall have a ſhare in proportion to their ſubſcription.

7. Sect. 60. The yearly ſum of 160,000*l.* ſhall be paid to the general ſociety or their treaſurer in truſt for the members.

8. Sect. 61. The ſubſcribers, and all perſons licenſed by them in their ſtead, may trade to the *Eaſt-Indies* and the parts beyond the cape of *Bona Eſperanza* to the ſtreights of *Magellan*; but none to trade by himſelf, or others, in any one year or more than the amount of his ſtock.

9. Sect. 62. All perſons intitled to ſhares in the principal ſtock may be incorporated into a company to trade with a joint ſtock in proportion to their intereſts, by ſuch name as his Majeſty ſhall think fit, with perpetual ſucceſſion, a common ſeal, &c.

10. Sect. 63. After the incorporating of ſuch company, the yearly fund ſhall be paid to the ſaid company, or their treaſurer, in truſt for the members, by weekly payments.

11. Sect. 64. Every member of the general ſociety, not in a company, ſhall before he be permitted to trade take an oath before two of the truſtees, to be faithful to the general ſociety, and not to trade to the *Indies* for more than this act allows. And all perſons, trading by licence ſhall enter ther licences in the books of the general ſociety, and take an oath to the like effect. And no member of any company having power to trade thither, during his continuance in the ſaid company, ſhall trade otherwiſe than in the ſtock. And every member of ſuch company ſhall take an oath before two of the truſtees, to be faithful, and not to trade to the *Indies* (during his continuance in the company) upon any private account. And no perſon ſhall be intruſted to trade upon the joint ſtock, or for a company, before he hath taken an oath, to be faithful to ſuch company, and not to trade thither, but for the account of ſuch company.

12. Sect. 65. Provided that quakers may, inſtead of an oath, make a ſolemn declaration to the ſame effect.

13. Sect. 66. All perſons trading to the *Eaſt-Indies* in purſuance of this act (except in a company) ſhall enter the goods they export before the lading thereof, with the ſhip's and maſter's name; which entries ſhall be upon oath, or ſolemn affiirmation, made before two truſtees, till a company be erected, and then before two directors of ſuch company.

14. Sect. 67. The general ſociety and companies may be impowered by charters to make bye laws for the good of the trade.

15. Sect. 68. Perſons not making true entries and affirmations ſhall forfeit the goods exported, or deſigned to be exported, and the proceed thereof, and double the value, to be divided as the charters ſhall appoint.

16. Sect. 69. No company or particular perſon ſhall trade to the *Eaſt-Indies* before ſecurity given to the commiſſioners of the cuſtoms, that all the goods to be laden for them in the *Indies* ſhall be brought to *England* without breaking bulk, the danger of the ſeas, pirates &c. excepted; and any difficulties in the acceptance of ſuch ſecurity ſhall be determined by any of the barons of the exchequer. (See 6 *Ann.* cap. 3. poſt parag. 30.) And all goods imported by the company, or other traders to the the *Eaſt-Indies*, ſhall be ſold openly by inch of candle, on pain of forfeiting the ſame or the value thereof; one moiety to his Majeſty, the other to the proſecutor.

17. Sect. 70. His Majeſty's commiſſion or charter ſhall direct in what manner the ſhares in the yearly fund, and in the ſtock in trade ſhall be tranſferred.

18. Sect 71. The ſtocks ſhall be eſteemed, in law, perſonal eſtates.

19. Sect. 72. The annuities iſſuing of the yearly fund, and the ſhares in trade ſhall be exempt from taxes.

20. Sect. 73. No member of any ſociety or company within this act, ſhall, in reſpect to his ſtock only, be adjudged a bankrupt, nor the ſtock liable to foreign attachment.

21. Sect, 74. No company eſtabliſhed in purſuance of this act, ſhall borrow any ſums on credit of the funds by this act granted; nor borrow, owe or give ſecurity for, any greater ſums than ſhall be imployed in their trade (which ſhall be borrowed only

on their common ſeal, and not repayable in leſs than ſix months) nor diſcount any bills or notes, or keep books or caſh for any perſons other than their own corporation.

22. Sect. 76. An additional duty of 5 *per cent.* ſhall be laid on all *Eaſt-India* goods imported by any perſons trading purſuant to this act, to be paid over to the general ſociety or ſuch companies as may be erected, for maintaining ambaſſadors and defraying other extraordinary expences; the overplus to be diſpoſed to the benefit of all the members.

23. Sect. 77. Security ſhall be given before landing for payment of the ſaid additional duty of 5 *l. per cent.* as ſoon as the goods ſhall be ſold, and goods landed before entry and the duty ſecured, or without warrant, ſhall be forfeited, one moiety to the king, the other to the ſeizor.

24. Sect. 78. The ſaid duty of 5 *per cent*, ſhall be managed by the commiſſioners of the cuſtoms, and paid over.

25. Sect. 81. The perſons who may trade to the *Eaſt-Indies*, purſuant to this act, ſhall have the ſole trade thither; and any other perſon trading thither ſhall forfeit ſhip and goods and double the value; one fourth part to the proſecutor, the other 3 parts to the general ſociety or company; they bearing the charge of proſecution.

29. Sect. 86. Every company erected in purſuance of this act, ſhall take care that the ſum 'total of their debts do not exceed the value of their capital; and in caſe ſuch company by dividends ſhall reduce their capital, ſo that their capital ſhall not be ſufficient to anſwer their debts, the members ſhall be liable, ſo far as their ſhares received upon ſuch dividends ſhall extend, to pay the debts beſides coſts.

27. Stat. 1. *Ann.* Stat. 1. cap. 12. Sect. 113. During the continuance of the union of the *India* companies, 494 tons and one quarter of good ſaltpetre ſhall yearly (if demanded) be delivered into her Majeſty's ſtores, for the firſt coſt, freight, duties

and

and other charges, by the company out of the united trade, and five tons and three quarters by the other members of the general ſociety.

28. Sect. 114. The price of the ſaid ſalt-petre, to be ſerved in time of peace ſhall be 45 *l. per* ton, and in time of war 53 *l.* and upon the refining, if the refraction be above 15 *lb.* in 112, the overplus ſhall be repaid to her Majeſty out of the price; and if the refraction ſhall be under that rate, the company ſhall be allowed the difference.

29. Sect. 115. In any charter to be granted to the companies they ſhall be obliged by covenant, to deliver their proportion of ſalt petre.

30. Stat. 6. *Ann.* cap. 3. Sect. 1. The ſecurity to be given in purſuance of the act 9. *Will.* 3. cap. 44. (See parag. 16.) Shall be after the rate of 200 *l.* for every 100 ton that the ſhips ſhall be let for; and the *Engliſh* company for every ſhip ſent out by them ſhall give ſecurity with the condition following, viz.

" Whereas in purſuance of an act of parliament " made in the ninth year of his late Majeſty's reign, " intituled," An act for raiſing a ſum not exceeding two, millions upon a fund for payment of annuities after the rate of 8 *l. per cent. per annum.* and for ſettleing the trade to the *Eaſt-Indies*, " the ſhip " whereof captain is maſter, of the burthen " of tons, is under the regulation of the ſaid " act, bound out upon a voyage to the *Eaſt-Indies*, " or other parts within the limits preſcribed by the " ſaid act, with a cargo or loading of goods upon account of the above bound *Engliſh* company trading " to the *Eaſt-Indies:* the condition of this obligation " is ſuch, that if all the goods, wares, merchandizes, " and commod ties, which ſhall at any time or times " hereafter, during the continuance of this preſent " intended voyage, be laden by, or for the ſaid company or any of them, or for their or any of their " accounts, in the ſaid ſhip, from the ſaid *Eaſt-Indies* or parts aforeſaid, ſhall be, without breaking

" bulk

" bulk, brought to ſome port of *Great Britain*,
" and there be unladen and put on land (the danger
" of the ſeas, enemies, pirates, conſtraint of princes
" and rulers, barratry of ſeamen, and neceſſary pro-
" viſions, ſtores and merchandizes for the people
" and garriſon of *St. Helena* only for their own pro-
" per conſumption excepted) then this obligation
" ſhall be void, or elſe ſhall remain in full force,
" effect and virtue.

31. Sect. 2. All goods loaden in the *Eaſt-Indies* or other parts within the limits in the ſaid act, upon any ſhips belonging to his Majeſty's ſubjects, with intent to be tranſported from the *Eaſt-Indies*, ſhall be brought to *Great Britain*, and unladen (ſtores for *St. Helena* excepted) and except danger of ſeas, &c. on pain of forfeiting all ſuch goods or the value thereof, one moiety to her Majeſty, and the other moiety to them that ſhall ſue for the ſame in any of the courts at *Weſtminſter*.

32. Stat. 6. *Ann.* cap. 17. Sect. 1. In this Stat. is the following recital among others, viz. And whereas by an indenture tripartite bearing date 22d. July 1702, made between her Majeſty of the firſt part, the governor and company of the merchants of *London* trading into the *Eaſt-Indies* of the ſecond part, and the *Engliſh* company trading to the *Eaſt-Indies* of the third part, it was (amongſt other things) agreed, with her Majeſty's approbation, that the ſaid gover-nor and company of merchants of *London*, trading into the *Eaſt-Indies*, ſhould purchaſe from the mem-bers of the ſaid *Engliſh* company, ſo much of their capital ſtock as would make the property of the ſaid governor and company of merchants of *London* trading into the *Eaſt-Indies* equal to the property which would then remain to the other members of the ſaid *Engliſh* company trading to the *Eaſt-Indies*; and that the whole trade which might or ſhould be carried on during the term of ſeven years, to be reck-oned from the date of that indenture, to and from the *Eaſt-Indies*, and the other parts within the limits aforeſaid,

aforeſaid, for or in reſpect of their ſeveral ſtocks and funds thereby agreed to be united, ſhould be for the benefit and behoof of all the members of the ſaid *Engliſh* company trading to the *Eaſt Indies*, proportionable to their ſhares in the capital or principal ſtock thereof; and that the ſaid governor and company of merchants of *London*, trading to the *Eaſt-Indies*, ſhould have a right and power equal to the reſt of the members of the ſaid *Engliſh* company, in the direction, management and carrying on of the ſaid trade, during the ſaid term of ſeven years; and that after the end or expiration of the ſaid term of ſeven years, the whole trade to the *Eaſt-Indies*, and other, the parts within the limits aforeſaid, for or in reſpect of their united ſtock and fund, ſhould for ever (ſubject to the redemption of the ſaid fund by parliament) be wholly managed and carried on by the ſaid *Engliſh* company trading to the *Eaſt-Indies* (by whatſoever name the ſame ſhould then be called.) According to the ſaid charter of the 5th of September in the 10th year of his late Majeſty's reign; and not otherwiſe. And to that end and purpoſe, many covenants, conditions and agreements were contained in the ſaid indenture, as by the ſame may more fully appear. And whereas the united ſtock of the ſaid governor and company of merchants of *London* trading into the *Eaſt-Indies*, in their own names, or in the names of others in truſt for them, doth at this time amount to 1,992,800 *l.* part of the ſum of 2,000,000*l.* mentioned in 9. and 10 *W.* 3. and their united fund doth amount to 159,420*l.* *per annum*, part of the ſum of 160,000 *l.* before mentioned: and as well the ſaid governor and company of merchants of *London* trading into the *Eaſt-Indies*, as the reſt of the members of the ſaid *Engliſh* company trading into the *Eaſt-Indies*, are willing to advance your Majeſty a further ſum of 1,200,000 *l.* upon the terms herein after expreſſed, &c. Therefore the ſaid *Engliſh* company trading to the *Eaſt-Indies*, as well for and on behalf of the ſaid governor and company of merchants

chants of *London* trading into the *Eaſt-Indies*, as for, and on behalf of all other, the members of the ſaid *Engliſh* company ſhall pay into the Exchequer, 1,200,000 *l.*

33. Sect. 2. The ſaid company may borrow by their common ſeal on their united ſtock, ſo as the principal money owing do not exceed 1,500,000 *l.* above what might lawfully be borrowed thereon before this act.

34. Sect. 3. In caſe the general court of the ſaid *Engliſh* company ſhall think fit, they may call in monies from their adventurers, towards raiſing the ſaid 1,200,000 *l.* or the repaying the money borrowed to that purpoſe: and in caſe any member ſhall neglect to pay their ſhare of the monies called in, or which the ſaid companies in purſuance of 9 *Will.* 3. cap. 44. or their charters, ſhall call in for carrying on their trade (by notice fixed on the *Royal Exchange London*) the companies may ſtop the dividends payable to ſuch member, and apply the ſame towards ſuch payment; and alſo ſtop the transfers of the ſhares of ſuch defaulter, and charge him with intereſt at 6 *l. per cent.* for the monies neglected to be paid; and if the principal and intereſt be not paid in three months, the companies may ſell ſo much of the ſtock of the defaulter as will pay the ſame.

35. Sect. 4. The ſaid 1,200,000 *l.* ſhall be deemed an addition to the ſtock of the *Engliſh* company, and be tax-free.

39. Sect. 5. The united ſtock of the ſaid *Engliſh* company ſhall be ſubject to the debts contracted by the ſaid company.

37. Sect. 6. The proviſio in 9 *Will.* 3. cap. 44. and in the charters of the ſaid company for reduction upon three years notice, upon repayment of the two millions paid in, and the arrears of the payments at 8 *per cent*, is repealed.

38. Sect. 7. Perſons intitled to 7,200 *l.* part of the two millions, who have not united their ſtock to the corporations, and who carry on a trade for their ſepa-

ſeparate uſe, may hold their proportion of the annuity, as if this act had not been made, but the *Engliſh* company may affix notice on the *Royal Exchange* of their intention to repay 7,200 *l.* at the end of three years; and in caſe the company pay the ſame, and the annuities at 8 *per cent.* for the ſame, then the ſaid ſtock of 7,200 *l.* and trade ſhall be veſted in the company.

39. Sect. 11. Upon importation of goods by the ſaid *Engliſh* company, the officers of the cuſtoms ſhall take bonds of the *Engliſh* company for the cuſtom of ſuch goods, for which bonds have uſually been given.

40. Sect. 12. All differences between this company and the old company are referred to lord *Godolphin*.

41. Sect. 13. The company ſhall be called "The "united company of merchants of *England* trading "to the *Eaſt-Indies*.

42. Sect. 14. This act and the acts therein recited, viz. 9 *Will.* 3. cap. 44. and 11 *Will.* 3. cap. 4. not printed ſhall be public acts.

43. Stat. 10. *Ann.* cap. 28. The proviſo 6 *Ann.* c. 17. for a redemption of the duties on ſalt, *&c.* repealed, and the ſaid duties ſhall continue. And the *Eaſt-India* company ſhall enjoy the yearly ſum of 160,000 *l.* &c. diſcharged of the ſaid condition 9. cap. 10. *Will.* III. cap. 44. 6. *Ann.* cap. 17. proviſo that on three years notice after 25th of *March*, 1733. and on repayment of 2,000,000 *l.* and 1,200,000 *l.* and all arrears due on the ſaid 160,000*l.* *per Annum* the ſaid duty on ſalt ſhall determine.

44. Stat. 5. *Geo.* 1. cap. 21. Sect. 1. If any of his majeſty's ſubjects repair to, or be in, the *Eaſt-Indies* or ſuch places of *Aſia Africa* and *America*, beyond the cape of *Bona Eſperanza*, to the ſtreights of *Magellan*, where any trade of merchandize may be had, contrary to the laws in being, every perſon ſo offending ſhall be liable to ſuch puniſhment, as by any law in being may be inflicted for ſuch offence.

Sect.

45. Sect. 2. It ſhall be lawful for the united company of merchants of *England*, trading to the *Eaſt-Indies*, and their ſucceſſors, to arreſt ſuch perſons, within the limits aforeſaid, and ſend them to *England* to anſwer for the ſaid offence.

46. Sect. 3. Every perſon who ſhall ſollicit for, obtain, or act under, any commiſſion from any foreign ſtate, to ſail or trade to the *Eaſt-Indies*, *&c.* ſhall forfeit 500 *l.*

47. Sect. 4. The ſaid penalties may be ſued for in any court of record at *Weſtminſter*, one moiety to the informer, the other to the crown.

48. Sect. 5. Nothing in this act ſhall prejudice ſuch right of trade, within the ſaid limits as the *South-Sea* company are intitled unto.

49. Sect. 6. This act ſhall continue for five years.

Continued by 5. *Geo.* I. cap. 29. for ſeven years, from *May* 1, 1732. and no longer.

50. Stat. 6. *Geo.* I. c. 28. Sect. 26. The *Eaſt-India* company may advance money on bottomry, to their captains, *&c.*

51. Stat. 7. *Geo.* I. cap. 5. Sect. 32. The *Eaſt-India* company may borrow money under their common ſeal, for carrying on their trade, or for lending money by way of bottomry; ſo as the whole ſum which they ſhall owe at any one time do not exceed the ſum due from the public, or five millions.

52. Sect. 33. It ſhall not be lawful for the ſaid company, to borrow any greater ſums than ſhall be laid out for buying of goods or bullion, to be exported for the account of the company, or otherwiſe employed in their trade, or ſhall be advanced on the bottom of any ſhip, or on goods on board any ſhip imployed in their ſervice; all which monies ſhall be borrowed only on their common ſeal, and ſhall not be made payable at any time leſs than ſix months; nor ſhall it be lawful for them to diſcount bills, nor to keep books or caſh for other perſons.

53. Stat. 7. *Geo.* I. cap. 21. Sect. 1. If any of his majeſty's ſubjects ſhall repair or trade to the *Eaſt-Indies*,

Indies, or places beyond the *Cape of Good-Hope*, mentioned in former acts, contrary to any law in being, it ſhall be lawful for the attorney general, or for the united company trading to the *Eaſt Indies*, within ſix years, to file in any of the courts at *Weſtminſter*, informations againſt ſuch offenders; and if the defendant be found guilty, the court ſhall give judgement againſt him, by fine and impriſonment, as the court ſhall think fit, and ſhall award the proſecutor's coſts; but if the defendant be acquitted, the company ſhall pay him coſts.

54. Sect. 2. All contracts made by any of his majeſty's ſubjects, or in truſt for them, on the loan of monies by way of bottomry on any ſhip in the ſervice of foreigners, and bound to the *Eaſt-Indies*, *&c.* and all contracts for ſupplying any ſuch ſhip with goods or proviſions, and all co-partnerſhips relating to any ſuch voyage, and agreements for the wages of perſons ſerving on board any ſuch ſhip, ſhall be void.

55. Sect. 3. Every ſubject of his majeſty, who ſhall go to the *Eaſt-Indies*, *&c.* contrary to the laws in being, ſhall be deemed to have traded there; and all the goods there purchaſed by any ſuch offender, or found in his cuſtody, or in the cuſtody of any other, in truſt for him, by his order, ſhall be forfeited and double the value.

56. Sect. 4. All goods ſhipped on board any ſhip bound for the *Eaſt Indies*, *&c.* (except goods of the company or ſuch as are licenſed by them, and the ſtores for ſuch ſhip) and all goods taken out of ſuch ſhip in her voyage homeward before her arrival, ſhall be forfeited and double the value; and the maſter or other officer knowingly permitting ſuch goods to be ſhipped or taken out of ſuch ſhip, ſhall forfeit for every offence 1000 *l.* and ſhall not be intitled to any wages; nor ſhall the company be obliged to pay any wages to ſuch maſter, *&c.* but ſhall have an allowance in reſpect thereof, out of the monies payable on account of the ſhip.

57. Sect. 5: It ſhall be lawful for the attorney general, at the relation of the company or by his own authority, to exhibit bills of complaint in the Exchequer, againſt any perſons trading to or from the *Eaſt-Indies*, *&c.* contrary to law for diſcovery of ſuch their trading, *&c.* and for recovery of the duties and damages herein mentioned; waving in ſuch bill all penalties for the matters in ſuch bill contained; and ſuch perſons ſhall pay to his Majeſty the cuſtoms of the goods, ariſing by the ſaid unlawful trade, and ſhall anſwer to the company 30*l per cent.* according to the value thereof in *England*: and if ſuch offenders pay the cuſtoms into his majeſty's Exchequer, and damages to the company, they ſhall not be proſecued on any other law for the ſame offence: and if ſuch bills (if exhibited at the relation of the company) be diſmiſſed, the company ſhall pay full coſts; and if a decree be obtained againſt the defendants they ſhall pay coſts to his Majeſty and the relator.

58. Sect. 6. All the penalties herein appointed, or in 9. *Will.* 3. cap. 44. or in 6. *Ann.* cap. 3. or in 5. *Geo.* 1. cap. 21. relating to the *Eaſt-India* company, ſhall be ſued for in any court of record at *Weſtminſter*, at the ſuit of the attorney general, or of the company, or of any officer of the cuſtoms; and one third part of ſuch penalties ſhall be to the crown, one other third to the company, and the remaining third to ſuch officers of the cuſtoms as ſhall ſue as aforeſaid.

59. Sect 7. Before any ſuit ſhall be commenced for the penalties aforeſaid by any officer of the cuſtoms, he ſhall go to the court of directors of the company and make known to them the offence, and his intentions to ſue for the ſame; and if the ſaid court ſhall elect to have the ſuit brought by bill in the Exchequer, with waiver of the penalties, then ſuch bills ſhall be filed in the name of the attorney general; and thereupon the company ſhall pay to ſuch officer one quarter part of the monies recovered, and the company ſhall bear the charges; but if the

the court of directors ſhall elect to have the ſuit commenced by information or action of debt, then the officer ſhall ſue for the ſame at law, and the informations, &c. ſhall not be diſcontinued, but with the conſent of the company or their court of directors

60. Sect. 8. This act ſhall not ſubject the company of merchants trading into the *Levant* ſeas, or any member thereof to anſwer any ſuch bill, or to any other penalties in reſpect of their trading into thoſe ſeas,

61. Sect. 9. After *June*, 1721. *Eaſt-India* goods carried into *Ireland*, *Jerſey*, *&c.* except ſuch as are loaden in *Great Britain*, ſhall be forfeited, together with the ſhip, *&c.* And ſuch ſhip and goods ſhall, and may be ſeized, and the ſame, or the value thereof, ſhall and may be proſecuted in any of his majeſty's courts of record, at *Weſtminſter*, or in *Dublin*, *&c.* one moiety of which forfeiture ſhall be to the uſe of his majeſty, and the other to the proſecutor. Officers of the cuſtoms conniving at ſuch importation, or delaying the proſecution, to forfeit 500 *l.* and be incapable of any office under the crown.

62. Sect. 13. The company ſhall be allowed to ſhip out ſtores for maintaining their garriſons and ſettlements, free of all duties, ſo as ſuch duties would not have exceeded in one year 300 *l.*

63. Stat. 9 *Geo.* I. cap. 26. Sect. 1. If any ſubjects of his majeſty ſhall contribute to, or encourage the eſtabliſhing, or carrying on any foreign company trading to the *Eaſt-Indies*, and other places beyond the *Cape of Good Hope*, deſcribed in former acts, or ſhall be intereſted in the ſtock, or actions of ſuch foreign company; every perſon ſo offending, ſhall forfeit his ſhare in the ſtock of any ſuch company, together with treble the value thereof; one third to the crown, and the remaining two thirds to the *Eaſt-India* company, if they ſue for the ſame, or otherwiſe one third of ſuch two thirds to the informer, taking ſuch conſent as is hereafter mentioned;

the ſaid penalties to be recovered by action of debt, &c.

64. Sect. 2. It ſhall be lawful for the attorney general, of his own authority, or at the relation of the company, to file a bill in chancery, or the exchequer, againſt any perſon who ſhall have contributed, or promoted any ſuch foreign company, for the diſcovery of his offence; waving in ſuch bill the forfeiture of the treble value, and inſiſting on the ſingle value; and in caſe the ſingle value of ſuch intereſt, ſhall be decreed to be paid by the offender, one third part thereof ſhall be paid to the crown, and the remaining two thirds to the company.

65. Sect. 3. If before any ſuit ſhall be commenced, any common informer ſhall go to the court of directors of the company, and make known the offence committed, and his intentions to ſue for the ſame; and if the ſaid court ſhall elect to have the ſuit commenced by bill in chancery, or exchequer, in every ſuch caſe, there ſhall be paid to ſuch informer one third of the remaining two thirds of the ſingle value of the ſaid intereſt, when recovered: But if the court of directors ſhall elect to have the ſuit commenced for the penalties, by information or action of debt, then the informer ſhall ſue for the ſame; and the action ſhall not be diſcontinued, but with the conſent of the company, or the court of directors.

66. Sect. 4. If any ſubject of his majeſty ſhall have accepted of any truſt, or ſhall know of any intereſt, which any of his majeſty's ſubjects ſhall have in any ſuch foreign company, and ſhall not within ſix months diſcover the ſame in writing, to the united company, or their court of directors, he ſhall forfeit treble the value of the intereſt, &c. one moiety to the crown, and the other to him who will ſue for the ſame, to be recovered by action of debt, &c. or otherwiſe, ſuch offender ſhall, at the diſcretion of the court where the proſecution is commenced, ſuffer one whole years impriſonment.

67.

67. Sect. 5. Every perſon, who within the time above limited, ſhall voluntarily come to the court of directors, and make a diſcovery in writing, of the intereſt of any of his majeſty's ſubjects, in the ſtock of ſuch foreign company, ſhall have one half of the clear amount of the forfeitures ariſing by this act, out of the eſtate of the perſons ſo intereſted, and the court in which the proſecution ſhall be commenced, ſhall award to the perſon making the diſcovery, ſuch reward.

68. Sect. 6. If any of his majeſty's ſubjects (other than ſuch as are lawfully authorized) ſhall go to, or be found in the *Eaſt-Indies*, the perſons ſo offending, are declared to be guilty of a high crime and miſdemeanour, and may be proſecuted in any court at *Weſtminſter*, and being convicted, ſhall be liable to ſuch corporal puniſhment, impriſonment, or fine, as the court ſhall think fit; one moiety to the crown, the other to the proſecutor.

69. Sect. 7. Perſons ſo offending, may be ſeized and brought to *England*; and any juſtice of peace may commit them to the next county gaol, till ſecurity be given, by natural-born ſubjects, to appear in the court, where ſuch proſecutions ſhall be commenced, and not to depart out of court, or out of the kingdom, without leave of the ſaid court.

70. Sect. 8. A *capias* in the firſt proceſs, ſhall iſſue upon any bills, indictments, *&c.* commenced, *&c.* by reaſon of any offence mentioned in this act, or in any other acts, made for ſecuring the trade to the *Eaſt-Indies*; which *capias* ſhall ſpecify the penalty ſued for; and ſuch offender ſhall give bail by ſubjects to appear to anſwer ſuch ſuit; and ſhall likewiſe at appearing, give bail as aforeſaid, to anſwer the forfeitures, in caſe he be convicted, or to yield his body to priſon.

71. Sect. 9. All offences againſt this act, or againſt the 9. *Will.* III. cap. 44. or againſt 5 *Geo.* I. cap. 21. or againſt 7. *Geo.* I. cap. 21. ſhall be laid

in *London* or *Middlesex*, at the pleasure of the prosecutor.

72. Sect. 10. This act, and the said acts, 5. *Geo.* I. and 7. *Geo.* I. shall be deemed public acts.

73. Sect. 11. In case the united company shall first prosecute for any offences, contrary to any statutes made for securing the trade to the *East-Indies*, the share of the penalties, otherwise given to any other persons that should sue, shall be to the use of the company, altho' such informations, *&c.* be commenced by the company, after the time limited by law, for the suit of the common informer.

74. Sect. 12. If any prosecution be commenced by virtue of any of the former acts, the offenders shall not be prosecuted upon this act, except such suit be by bill in the chancery or exchequer.

75. Stat. 12. *Geo.* I. cap. 28. Sect. 12. No *East-India* goods, shall be brought from the *Isle of Man*, into *Great Britain*, on pain of forfeiting ship, *&c.*

76. Stat. 12. *Geo.* I. cap. 32. Sect. 9. Forging any *East-India* bond, or any indorsement, or assignment thereon, is felony, without benefit of clergy.

77. Stat. 3. *Geo.* II. cap. 14. Sect. 4. The annuity of 160,000 *l.* shall be reduced to 128,000 *l.* in respect of the capital stock, of 3,200,000 *l.* which reduced annuity shall be charged on the same revenues, as their present annuity is now charged on, till some other provision be made by parliament with consent of the company.

78. Sect. 5. On one years notice to be given by parliament, after the 25th of *March*, 1736. and on repayment of the capital-stock of 3,200,000 *l.* and of all arrears of their reduced annuity, their said annuity shall cease.

79. Sect. 6. Upon one years notice after the 25th of *March*, 1736. to be given by parliament, on re-payment to the company, of any sum, not less than 500.000 *l.* in part of the capital stock, and on payment of all arrears due on their reduced annuities;

so

ſo much of the ſaid annuity, as ſhall bear proportion to the monies paid in part, ſhall ceaſe.

80. Sect. 7. Notwithſtanding ſuch redemption, the united company ſhall continue a body corporate, by the name of 'The united company of merchants 'of *England*, trading to the *Eaſt-Indies*,' and enjoy all privileges, which by former acts or charters founded thereon, the company might enjoy.

81. Sect. 8. After redemption of the ſaid yearly fund, or one moiety thereof, the company may, by by-laws to be be made in their general courts, declare what ſhare in the remaining ſtock, *&c.* ſhall qualify members to be directors, or to give votes in any general court.

82. Sect. 9. Notwithſtanding ſuch redemption, the company ſhall, ſubject to the proviſo of determination herein contained, enjoy the ſole trade to the *Eaſt-Indies*, and of all places between the *Cape of Good Hope*, and the *Streights of Magellan*; and if any ſubjects, other than the factors, *&c.* of the company, ſhall ſail or adventure to the *Eaſt-Indies*, *&c.* every ſuch offender ſhall incur the loſs of all ſhips imployed in ſuch trade, *&c.* with the guns and furniture, and the goods laden thereon, and double the value thereof; which forfeitures ſhall be ſued for, and diſtributed, as by act 7 *Geo.* I. cap. 21.

83. Sect. 10. The ſaid company ſhall have all powers by any acts or charters granted to the company, not altered by this act, diſcharged from all proviſoes of redemption therein contained, for ſecuring to them the ſole trade to the *Eaſt-Indies*, and for ſecuring their effects, and governing their affairs.

84. Sect. 11. Provided that upon three years notice to be given by parliament, after the 25th of *March*, 1766. and repayment of the capital ſtock of 3,200,000 *l.* and all arrears of annuity, payable in reſpect thereof, the right of the company, to the ſole trade to the *Eaſt-Indies*, *&c.* ſhall ceaſe.

85. Sect. 12. Nothing in the above proviſo, or in the charter of the fifth of *September*. 10. *Will.* III,

ſhall extend to determine the corporation of the united company, or to exclude them from carrying on a free trade to the *Eaſt-Indies*, *&c.* with their joint ſtock, *&c.* in common with other ſubjects of his majeſty.

86. Sect. 13. Any notice in writing, ſignified by the ſpeaker of the houſe of commons, ſhall be deemed proper notice by parliament to the company.

87. Sect. 14. The united company are reſtrained from purchaſing hereditaments in *Great Britain*, exceeding in the whole, the yearly value of 10,000*l*.

88. Sect. 15. Nothing in this act ſhall prejudice ſuch trade or navigation within the ſaid limits, as the *South-Sea* company are intitled unto.

89. Sect. 16. Nothing herein ſhall ſubject the governor, and company of the merchants of *England* trading to the *Levant* ſeas, to any penalties in reſpect to their trading into thoſe ſeas.

90. Stat. 2 *Geo.* II. cap. 25. Sect. 3. Stealing *Eaſt-India* bonds, is felony without benefit of clergy.

91. Stat. 3 *Geo.* II cap. 20. Sect. 22. The reduced annuity of 128,000 *l.* ſhall be transferred from the duties now charged, and be charged upon the aggregate fund, to be paid to the united company, by like quarterly payments as their preſent annuities; but ſubject to redemption by parliament, as by any other act of this ſeſſion; and ſubject to ſuch prior incumbrances, as ſhall be made by parliament, on the growing produce of the aggregate fund, before the taking place of ſuch reduction.

92. Stat. 12 *Geo.* II. cap. 22. Sect. 3. The commiſſioners of exciſe in *Ireland*, for the time being, or any three of them, or the ſub-commiſſioners of exciſe for the time being, or the major part of them may try offences againſt any acts, for prohibiting the running of *India* goods, in a ſummary way.

93. Stat. 17 *Geo.* II. cap. 17: Sect. 2. The united company of merchants of *England*, trading to the *Eaſt-Indies*, in purſuance of an agreement for

that

that purpoſe, ſhall advance and pay into the exchequer, for his majeſty's uſe, the full ſum of 1,000,000 *l.* on or about the 29th day of *September*, which ſhall be in the year 1744. at ſuch times, and in ſuch proportions as the commiſſioners of his majeſty's treaſury, *&c.* ſhall think fit to direct and appoint, ſo as the firſt united company be not obliged to pay more than 250,000 *l.* at any one time, nor without having one months notice, before each reſpective time of payment, and ſo as the firſt company be not obliged to make any ſuch payment before the 25th of *May*, 1744.

94. Sect. 3. Provided that out of the firſt ſum of one million, the firſt company ſhall have, and receive back by way of diſcount, ſo much as the intereſt, at the rate of 3 *l. per cent.* annually, for each ſum of money, which ſhall be actually advanced and paid for, or upon account of the firſt ſum of one million, ſhall amount unto, from the day of the actual payment thereof, until the ſaid 29th day of *September*, 1744, and in caſe the ſaid company ſhall make failure in any of the ſaid payments, at, or before the reſpective days or times appointed as aforeſaid, the money whereof ſuch failure in payment ſhall be made, may be recovered to his majeſty's uſe, by action of debt, or upon the caſe, *&c.* in any of his majeſty's courts of record at *Weſtminſter*, wherein no eſſoin *&c.* ſhall be allowed, in which action it ſhall be lawful to declare, that the ſaid company are indebted to his majeſty, the monies of which they ſhall have made default in payment, according to the form of this ſtatute, and have not paid the ſame, which ſhall be ſufficient; and in, or upon ſuch action, *&c.* there ſhall be further recovered to his majeſty's uſe, againſt the ſaid united company, damages after the rate 20 *l. per cent. per annum*, for the monies ſo unpaid, contrary to this act, beſides full coſts of ſuit. And the firſt united company, and their ſucceſſors, and their ſaid ſtock and funds ſhall be, and are hereby made ſubject and liable thereunto.

96. Sect. 4. The proviſoes contained in Stat. 3. *Geo.* II. (ſee par. 84.)and all other proviſoes contained in any other act, or acts of parliament, for determining the annuity, or yearly fund of the firſt company and the right, title and intereſt of the firſt company, to the ſole and excluſive trade to the *Eaſt-Indies*, and parts aforeſaid, or either of them, upon the reſpective notice and payments in the ſame acts mentioned, ſhall be and are hereby repealed and made void, and that the firſt company and their ſucceſſors, ſhall for ever have, receive, and enjoy, not only their preſent entire annuity, or yearly fund of 128,000 *l.* out of the rates, duties, and revenues charged therewith, or liable to make good the ſame; but alſo that from and after the 29th day of *September*, 1744, the ſaid company, and their ſucceſſors for ever, ſhall in reſpect of the firſt principal ſum of one million, directed to be paid by them, have, receive and enjoy a further annuity, or yearly ſum of 30,000 *l.* computed after the rate of three pounds *per cent. per annum*; which ſaid annuity, or yearly ſum ſhall be charged upon, and payable out of the ſurplus of the rates and duties on ſpirituous liquors, by this act granted; and the ſaid ſurplus of the ſaid rates and duties, after the ſeveral annuities before charged thereon are ſatisfied, are hereby declared to be a fund, and ſecurity for anſwering and paying the firſt yearly ſum or annuity of 30,000 *l.* to the ſaid company, and their ſucceſſors for ever, until redemption thereof by parliament, according to the proviſoes herein after contained in that behalf; and that firſt annuity and yearly ſum ſhall be paid quarterly, at the four moſt uſual feaſts or days of payment in the year, by even and equal portions; the ſaid payment to be due and payable at *Chriſtmas*, 1744, and ſhall be free from all taxes and impoſitions whatſoever.

97. Sect. 5. The ſaid annuity of 30,000 *l.* ſhall be paid out of the exchequer without fee, *&c.*—Officer

ficer neglecting payment, ſhall loſe his place, and pay treble damages; one third to his majeſty, and two thirds with coſts to the company.

98. Sect. 6. Deficiency of any quarterly payment to be ſupplied out of the ſinking fund.

99. Sect. 8. It ſhall be lawful for the ſaid company under their common ſeal, to borrow any ſum or ſums of money from time to time, upon account of their ſtock and fund, ſo as the ſum total of all the principal monies which at any one time ſhall be owing upon the ſecurity of the ſaid ſeal, do not exceed one million, over and above the monies, which might lawfully be borrowed thereupon, before the making of this preſent act.

100. Sect. 9. Provided that at any time, upon one years notice to be given by parliament, after the 25th day of *March*, 1745, and not before, upon the expiration of the ſaid year, and upon repayment by parliament, to the ſaid company or their ſucceſſors, as well of the ſaid ſum of 3,200,000 *l.* formerly advanced, as of the ſaid ſum of 1000,000 *l.* now to be advanced, amounting in the whole to the ſum of 4,200,000 *l.* without any deduction, diſcount, or abatement whatſoever, to be made out of the ſame, or any part thereof; and upon payment to the ſaid united company, and their ſucceſſors, of all arrears of the ſaid reſpective annuities or yearly funds of 128,000 *l.* and 30,000 *l.* then, and in ſuch caſe; and not till then, the ſaid reſpective annuities and yearly funds ſhall ceaſe, determine and be no longer paid or payable.

101. Sect. 10. Upon one year's notice after the 25th of March, 1745, to be given by parliament, and on repayment by parliament to the ſaid united company of any ſum of money not leſs than 500,000*l.* in part of the ſaid capital ſtock or debt of 4,200,000*l.* and upon payment of all arrears, which ſhall then be due on their ſaid annuites, or yearly funds, or upon any part thereof; then, from and after ſuch payment,

ment, ſo much of the ſaid annuities as ſhall bear proportion to the money ſo paid in part ſhall ceaſe, determine and be abated; and ſo on from time to time on ſuch yearly notices to be given by parliament, and payment from time to time of ſuch other ſums in part of the ſaid capital ſtock or debt, not leſs than 500,000 *l.* at a time, and of ſuch arrears of their annuities or yearly funds, until the payment of the whole ſhall be compleated, ſo much of their ſaid annuities or yearly funds as ſhall bear proportion to ſuch reſpective ſums paid in part ſhall from time to time as ſuch payments are made, ſink and be abated, until their whole annuities or yearly funds ſhall be entirely ſunk and determined.

102. Sect. 11. Notwithſtanding ſuch redemption of the ſaid annuities or yearly funds of 128,000*l.* and 30,000 *l.* as aforeſaid, the ſaid company ſhall (ſubject to the priviſo of determination herein after contained) have, uſe and enjoy, an excluſive trade; *&c.* to, and from the *Eaſt-Indies* and to, and from all the iſlands; and places between the *Cape* of *Good Hope*, and the *Streights of Magellan*, and limits in the act 9 *Will.* III. or in the charter of the 5th of *September* in the 10th year of *Will.* III. mentioned, in as ample and beneficial manner as the ſaid company could thereby or otherwiſe lawfully trade thereto; and the ſaid *Eaſt-Indies*, or the iſlands, havens, coaſts, ports, cities, towns, and places within the limits aforeſaid, or any of them, ſhall not from hence forth at any time before the determination of the ſaid ſole trade of the ſaid company be repaired or ſailed to, viſited, frequented, or haunted by any other the ſubjects of his Majeſty, his heirs or ſucceſſors whatſoever, and any of the ſaid ſubjects of his Majeſty, his heirs or ſucceſſors, of what degree or quality ſoever they be, other than the factors, agents and ſervants of the ſaid company, or ſuch as be by them thereunto licenſed or authoriſed, ſhall at any time hereafter before ſuch determination directly or indirectly ſail or go to, viſit, haunt, frequent, traf-

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ſic, trade, or adventure in, to, or from, the ſaid *Eaſt-Indies* or other the limits or parts aforeſaid, ſuch offender and offenders ſhall incur the forfeiture and loſs of all the ſhips and veſſels which ſhall be employed in ſuch voyage, trade, traffic, or adventure, with the guns, tackle, apparel, and furniture thereunto belonging, and alſo all the goods laden thereupon or that were or ſhall be ſent to, acquired, traded, trafficed or adventured within the ſaid *Eaſt-Indies* or parts aforeſaid, and all the proceed and effects of the ſame and every of them, and double the value thereof; which penalties and forfeitures ſhall be ſo ſued for, ſeized, diſtributed, and diſtributable, recovered and recoverable as in and by an act made in the 7th *Geo.* I. ſee parag. 53.

103. Sect. 12. The company ſhall have and enjoy the benefit of all acts and charters made in their favour, as fully and effectually as if the profits, benefits, advantages, trade, privileges, franchiſes, abilities, capacities, powers authorities, *&c.* therein contained, were ſeverally repeated, and at large re-enacted in the body of this act; ſubject to ſuch reſtrictions, *&c.* as are contained in ſaid acts and letters patent now in force, and not herein altered, and ſubject to the proviſo following, viz.

104. Sect. 13. Provided always that at any time upon three years notice to be given by parliament after the 25th *March* 1780, upon the expiration of the ſaid three years, and repayment to the ſaid company, or their ſucceſſors, of the ſaid capital ſtock debt or ſum of 4,200,000 *l.* and all arrears of annuity payable in reſpect thereof, in caſe the ſame ſhall not have been before required, then, and from thenceforth, and not before or ſooner, the ſaid right title and intereſt of the ſaid company, to the excluſive trade to the *Eaſt-Indies* and parts aforeſaid ſhall ceaſe and determine.

105. Sect. 14. The company ſhall have a common right of trade with others, after their excluſive right is determined.

106.

106. Sect. 15. Any notice in writing ſignified by the ſpeaker of the houſe of commons for the time being, by order of the ſaid houſe, ſhall be deemed and adjudged a due and proper notice by parliament to and for all the ends, intents and purpoſes for which ſuch notices are directed by this act to be given to the company.

107. Stat. 27 *Geo.* II. cap. 9 Sect. 1 to 12 inclusive. The company's troops are made ſubject to martial law.

108. Sect. 13. Offences committed by the company's preſidents, council or governors may be enquired of, heard and determined in the court of king's bench, or before commiſſioners appointed by his Majeſty in England.

South-Sea Company.

*STAT. 9 *Ann.* cap. 21. Sect. 1. To make a provision for the following debts and deficiencies, viz. 5,130,539 *l.* 5*s.* 5*d.* for the debt of the navy, and 154,324 *l.* 15*s.* 8*d.* farthing for the debt of the office of ordnance; and 42,479 *l.* 5*s.* 4*d.* farthing for transport service; and 1,018,656*l.* 17*s.* 9*d.* farthing, to the 29th of *September* 1710. on army and transport debentures; and 12,025 *l.* 1*s.* of deficient tallies and orders on 9 *Will.* III. cap. 13. and another act 1 *Ann.* Stat. 2 cap. 4 for laying duties on coals; and 378,859 *l.* 5*s.* 8*d.* farthing for debts incurred between the 29th of *September*, 1710, and the 25th of *December*, 1710, in the several offices of the navy, victualling and transport; and 9,375 *l* upon account of subsidies to the elector of *Hanover* and duke of *Zell*, pursuant to a treaty bearing date the 14th of *May* 1696, and the interest of such part of the said debts as carry interest from the 25th of *December* 1710. to the 25th of *December* 1711, computed to 85,000 *l.* and for money lent pursuant to an act 8 *Ann.* cap. 13 (for continuing several duties upon goods imported, viz. on Wine by 1 Iac. 2. cap. 1. on Tobacco by 1 Iac 2. cap. 4. the additional import by 4 *Will.* and *Mary*. cap. 5. the duty

* This act is intitled, "An act for making good deficiencies, "and satisfying the public debts; and for erecting a corporation "to carry on a trade to the *South-Sea*; and for the encouragement of the fishery; and for liberty to trade in unwrought "Iron with the subjects of *Spain*; and to repeal the acts for registering seamen.

on

on whale fins by 9 *Will.* III. cap. 45. to raiſe money for the ſervice of the year 1710) 1,296,552*l.* 6*s.* 11*d.* three farthings, and for intereſt due on the ſame on the 25th of *March* 1711, 74,875*l.* 19*s.* 1*d.* farthing which will make the deficiencies, and the principal and intereſt upon the ſaid act 8 *Ann.* cap. 13. amount together to 8,585,000 *l.* the intereſt of which ſum, from the 25th of *March* 1711, to the 25th of *December* 1711. at ſix *per cent.* doth amount unto 386,325 *l.* which being added to the ſaid ſum, makes the ſum total to the 25th of *December* 1711 amount to 8,971,325. To make a proviſion for the ſaid debts, deficiencies and ſums of money and for the raiſing the further ſum of 500,000*l.* for the ſervice of the year, which makes the total amount to 9,471,325 *l.* and for paying an intereſt or annuity of 6 *per cent*, until the principal be paid, as herein is mentioned, which doth amount unto the annual ſum of 568,279*l.* 10*s.* all the duties upon wines, vinegar and tobacco, and upon *India* goods and wrought ſilks, and upon whale fins, and upon any other goods, which by the ſaid act 8 *Ann.* cap. 13 were made payable to her Majeſty, ſhall be further continued for ever; and the acts of parliament (which by the ſaid act were continued) as concerning the ſaid duties, ſhall be in force for ever.

2. Sect. 2. Provided that the duty upon tobacco ſhall be levied according to ſuch rules as are preſcribed in the act 7 *Will.* III. cap. 10.

3. Sect. 3. Where any other proviſion is made by any act of parliament, now in being, about any other things contained in the acts hereby continued, ſuch other proviſions ſhall be obſerved.

4. Sect. 4. All ſurplus monies ariſing in the receipt of the Exchequer for the duties hereby continued, after payment of all ſuch principal and intereſt as by the former acts are charged thereupon, ſhall be appropriated to the uſes in this act.

5. Sect. 7. The duties upon candles, which by an act 8 *Ann.* cap. 9. were granted to her Majeſty, ſhall

ſhall be continued as well upon all wax-candles, and candles called wax-candles, (notwithſtanding the mixture of other ingredients) as upon tallow-candles imported into, or made in *Great Britain* for ever; and alſo the ſeveral rates upon monies given with clerks, apprentices and ſervants, which were granted by the laſt mentioned act, ſhall be continued for ever; and the ſaid act concerning the ſaid duties upon candles, and the rates upon monies given with clerks, apprentices and ſervants, ſhall be in force for ever.

6. Sect. 8. After all the principal and intereſt, which by the laſt mentioned act are charged on the duties on candles, and rates on money given with clerks, apprentices and ſervants ſhall be paid off; all the monies which ſhall ariſe by the ſaid impoſitions on candles, and monies given with clerks *&c.* ſhall be paid in, to the receipt of the Exchequer for the purpoſes in this act.

7. Sect. 9. The receivers general of the cuſtoms in *England*, and *Scotland*, ſhall keep apart all money ariſing by ſuch part of the duties hereby appropriated, as ſhall be under the care of the commiſſioners of the cuſtoms; and the commiſſioners of the exciſe in *England* and *Scotland*, ſhall keep apart all money ariſing by ſuch of the duties hereby appropriated, as ſhall be under the care of the ſaid commiſſioners of exciſe; and alſo the commiſſioners for ſtamping of vellum, *&c.* ſhall cauſe to be kept apart all the monies ariſing by the rates upon monies given with clerks, apprentices, or ſervants, hereby appropriated; and as well the receivers general of the cuſtoms, and the commiſſioners of exciſe, as the commiſſioners for marking vellum, *&c.* are required to pay weekly, on *Wedneſday*, if not a holy-day, *&c.* all the monies ariſing by ſuch of the ſeveral duties hereby appropriated, as ſhall be under the care of the ſaid commiſſioners, *&c.* into the receipt of the exchequer, apart from all other monies; and the receiver general of the cuſtoms and exciſe of *Scotland*, are required

quired to tranſmit into the receipt of the Exchequer in *England*, all the monies which ſhall ariſe in *Scotland* aforeſaid, for the purpoſes in this act.

8. Sect. 10. There ſhall be kept in the Exchequer, in the office of the auditor of the receipt books, in which all the monies which as aforeſaid ſhall be brought into the ſame receipt, ſhall be entered apart.

9. Sect. 11. If the ſaid receiver general of the cuſtoms, commiſſioners of the exciſe, or the commiſſioners for marking of vellum, *&c.* ſhall neglect to pay any the ſums appointed to be paid as aforeſaid, or ſhall miſapply the ſame, they ſhall forfeit their office, and ſhall be incapable to ſerve her majeſty in any office or place of profit or truſt, and ſhall be liable to pay double the value of every ſum miſapplied, with coſts, to any perſon who ſhall be intitled to any payment, out of the fund by this act ſettled, and will ſue for the ſame in any court of record of her Majeſty, wherein no privilege of parliament *&c.* ſhall be allowed.

The two laſt clauſes are repeated in the ſubſequent acts for enlarging the South-Sea *fund.*.

10. Sect. 12. The head offices of the cuſtoms and exciſe, and the chief office for marking of vellum, *&c.* ſhall for ever be continued, with a ſufficient number of commiſſioners, and a comptroller in each.

11. Sect. 13. The comptrollers in the ſaid offices, ſhall keep accounts of all the monies which ſhall ariſe of the ſaid duties, to which all perſons concerned, ſhall have acceſs without fee: and if any ſuch comptroller ſhall neglect his duty therein, he ſhall forfeit his office, and be rendered incapable as aforeſaid, and ſhall alſo forfeit 100 *l.* to any perſon intitled to any payment by this act, and that will ſue for the ſame, with coſts.

12. Sect. 14. If any collector or receiver of the duties by this act appropriated, ſhall detain any of the monies contrary to his duty, he ſhall be diſmiſſed from his employment, and be charged with intereſt

tereſt for the monies ſo detained, after the rate of twelve *per cent. per annum*, and be liable to anſwer treble damages, to every perſon grieved by ſuch detention; and if any collector, or receiver of the ſaid duties ſhall miſapply any of the ſaid monies, he ſhall be diſmiſſed from his employment, and rendered incapable to ſerve her majeſty, and ſhall forfeit double the ſum ſo miſapplied, to any perſon who ſhall be intitled to any payment out of the fund, and will ſue for the ſame.

13. Sect. 20. Every year for ever, reckoning the year to begin from the 25th of *December*, the annual ſum of 568,279*l.* 10*s.* of the monies to ariſe by the ſaid duties, ſhall be the yearly fund for anſwering the annuities in this act expreſſed.

14. Sect. 21. All the money ariſing by the ſaid duties, or ſo much thereof, as ſhall be ſufficient, ſhall be appropriated for the raiſing the ſaid yearly fund, and ſhall be iſſued out of the receipt of Exchequer, without fee; and the officers in the Exchequer, who ſhall make any delay in iſſuing the ſaid money, or ſhall be guilty of diverting the ſaid monies to any other uſe, ſhall be fore-judged from their office, and be rendered incapable to ſerve her Majeſty, in any office of truſt or profit, and alſo ſhall pay double the value of any ſum delayed, or miſapplied, to any perſon grieved thereby, and who will ſue for ſame.

15. Sect. 22. In caſe the ſaid duties ſhall be ſo deficient, as that within any one year, the ſaid payment ſhall not be ſufficient to ſatisfy the ſaid yearly ſum of 568,279*l.* 10*s.* ſuch deficiency ſhall be made good out of the next aids to be granted by parliament.

16. Sect. 23. In caſe there ſhall be any ſurplus of the duties at the end of any year, ſuch ſurplus ſhall be applied towards diſcharging the principal of the capital ſtock of the intended company; and the yearly ſum of 568,279*l.* 10*s.* ſhall be abated in proportion..

17. Sect. 24. Upon one years notice, upon repayment by parliament, of the principal ſum of which the capital ſtock of the intended company ſhall conſiſt, and of all arrears of the ſaid annuities, the duties hereby appropriated, may be diſpoſed of by parliament, and the ſaid yearly fund charged thereupon, ſhall ceaſe.

18. Sect. 25. It ſhall be lawful for her majeſty, by letters patent, to incorporate all perſons intitled to any of the public debts, deficiencies, or ſums of money, provided for by this act, with power to chooſe their governor, directors, and other officers; and the perſons ſo incorporated, ſhall be capable in law to purchaſe and retain, to them and their ſucceſſors, lands and hereditaments, not exceeding the yearly value of 1000 *l.*

19. Sect. 26. It ſhall be lawful for her Majeſty, by the ſaid letters patent, or by commiſſion under the great ſeal, to direct how the tallies, or debenturs provided for by this act, and the money intended to be made part of the capital ſtock, of the ſaid corporation, ſhall be ſubſcribed into, or made part of the ſaid capital ſtock, and alſo to direct how the officers of the Exchequer may know how much the capital ſtock of the company doth conſiſt of, that the officers may know whether they are to pay to the caſhier of the company, the whole annual ſum of 568,279 *l.* 10 *s.* or only a proportionable part.

20. Sect. 34. If it appear that the joint ſtock of the company ſhall amount to more than 9,471,325 *l.* ſo that the annuity for the ſame, ſhall amount to more than 568,279 *l.* 10 *s.* then there ſhall be added to the ſaid annual ſum, ſo much more as ſhall make the ſame amount to ſix *per cent. per annum*, upon the whole capital ſtock, and ſuch additional annuity ſhall be chargeable upon the ſaid funds.

21. Sect. 35. Over and above the ſaid annual ſum, there ſhall be paid to the ſaid company, the further annual ſum of 8000 *l.* for charge of management, out of the ſame funds.

22. Sect.

22. Sect. 36. It ſhall be lawful for her Majeſty by any commiſſion, or letters patent under the great ſeal, to direct how the ſhares of every perſon in the ſtock of the company ſhall be transferable, to ſuch perſons as ſhall freely and voluntarily accept of the ſame; and all transferrences made in ſuch manner, and no other, ſhall be good in law.

23. Sect. 37. The eſtates and ſtocks of the ſaid company, and the ſhare of each member therein, ſhall be perſonal, and not real eſtate, and ſhall go to executors or adminiſtrators, and not to the heirs.

24. Sect. 38. The annuities iſſuing out of the ſaid yearly fund, or the ſhares of any members of the company, in the capital ſtock of the ſame, or in the benefit of trade to be annexed thereto, or the ſtock, or money to be raiſed for that purpoſe, ſhall be exempted from taxes.

25. Sect. 42. No member of the company ſhall, in reſpect of his being a member, governor, or director, or having any ſtock therein, be diſabled from being member of parliament, or liable to be a bankrupt; and no ſtock in the company ſhall be liable to foreign attachments.

The three laſt foregoing ſections are repeated in the ſubſequent acts, for enlarging the South-Sea *funds.*

26. Sect. 43. It ſhall not be lawful for the corporation to borrow, owe, or take up, any money on their bills or notes, payable on demand, or at any leſs time than ſix months; and it ſhall not be lawful for the corporation to diſcount bills or notes, or to keep books or caſh for any perſon, other than the books and caſh of the corporation.

27. Sect. 44. The ſaid yearly fund ſhall (under the penalties aforeſaid) be iſſued at the receipt of Exchequer to the ſaid company; and the payment thereof ſhall be made weekly, ſo as by ſuch payments the whole of the annuities due to the company at the end of any quarter, be not exceeded.

28. Sect. 46. The corporation to be erected, ſhall have for ever the ſole trade to and from all places of *America*, on the eaſt ſide thereof, from the river of *Aranoca*, to the ſouthermoſt part of the *Terra del fuego*; and on the weſt ſide thereof, from the ſouthermoſt part of the *Terra del fuego*, thro' the *South-Seas*, to the northermoſt part of *America*, and to all places within the ſaid limits, reputed to belong to the crown of *Spain*, or which ſhall hereafter be diſcovered, not exceeding 300 leagues from the continent of *America*, between the ſouthermoſt part of *Terra del fuego*, and the northermoſt part of *America* on the weſt ſide (except the kingdom of *Brazil*, and ſuch other places on the eaſt ſide of *America*, as are in poſſeſſion of the crown of *Portugal*, and the country of *Surinam*, in the poſſeſſion of the *States General*) it being intended that it may be lawful for all the ſubjects of her Majeſty, to trade to any part on the eaſt ſide of *America*, now in the poſſeſſion of the crown of *Portugal*, or the *States-General*.

29. Sect. 47. The ſaid company, and every perſon licenſed by the ſaid corporation, may for ever traffic to and from the *South-Seas*, and other parts within the limits aforeſaid.

30. Sect. 48. It ſhall be lawful for her Majeſty by her charter of incorporation, to impower the company to make laws for the good government of the ſaid trade, and to inflict puniſhments by impriſonments, mulcts, fines, and amercements, for breaches thereof, and to levy ſuch mulcts, *&c.* to the uſe of the company.

31. Sect. 49. If any of the ſubjects of her Majeſty, other than the company or their factors or ſervants, or perſons by them licenſed, ſhall viſit or frequent, trade or adventure, unto or from the *South-Seas*, or other the parts within the limits aforeſaid, or ſhall freight or fit out any ſhip, or lade any goods, with intent to trade to or from the *South-Seas*, or other parts within the limits aforeſaid; every ſuch offender ſhall incur the forfeiture of all ſhips employed in ſuch trade,

trade, and all the goods laden thereupon, and all the proceed of the ſame, and alſo double the value thereof, one fourth part to her Majeſty, one fourth part to ſuch as will ſeize or ſue for the ſame, and the other two fourth parts to the uſe of the company; ſuch penalty to be recovered in any of her Majeſty's courts, of record.

32. Sect. 50. The company ſhall have all the iſlands, cities, forts, towns, and places, which they, their factors or ſervants, or other perſons licenſed by them to trade, or ſuch of the ſhips of her Majeſty, as ſhe ſhall allow for defence of the trade, ſhall diſcover or poſſeſs within the limits aforeſaid, to be holden of her Majeſty, in free and common ſocage, by fealty, and rendering to her Majeſty the annual rent of one ounce of gold for the ſame, if demanded.

33. Sect. 51. The company ſhall have all ſhips and goods which ſhall be taken as prizes, by the ſhips employed, or licenſed by the company within the limits aforeſaid, or by ſuch ſhips of her Majeſty, as ſhe ſhall allow for defence of the trade without any account, ſave only that the officers and ſea-men on board the ſaid ſhip of her Majeſty, which ſhall be aſſiſting to the taking any ſuch ſhips or goods as prize, ſhall have ſuch ſhare thereof as her Majeſty ſhall direct, by the charter of incorporation; and it ſhall be lawful for the company and their ſervants, and other perſons employed or licenſed by them, to ſeize by force of arms, the perſons, ſhips, goods or effects, of any of the ſubjects of her Majeſty, who ſhall frequent, trade, or adventure into the *South-Seas*, or other the limits aforeſaid, and to detain to the uſe of the company, the ſhips, goods, and effects, ſo ſeized, and to ſend to *Great Britain* the perſons of ſuch of the ſubjects of her Majeſty, as ſhall be ſo ſeized, in order to their being proſecuted according to law.

34. Sect. 52. In caſe any commanders, or officers of ſuch ſhips of her Majeſty, as ſhall be employed in ſecuring the ſaid trade, ſhall not conform themſelves to ſuch inſtructions, as they ſhall receive

from the directors of the company, in writing, every ſuch commander and officer ſhall be for ever incapable to ſerve her Majeſty in any place of truſt or profit, and ſhall pay to the company double the value of all ſuch damages as the company ſhall ſuſtain by the breach of ſuch orders, to be recovered with coſts in any court of record of her Majeſty.

35. Sect 53. All ſuch perſons as ſhall be borne on board any of the ſhips employed about the ſaid trade, or in any the places which ſhall be diſcovered or poſſeſſed by the company, ſhall be deemed natural born ſubjects.

36. Sect. 54. No ſhip which ſhall belong to, or be freighted by the company or perſons licenſed by them to trade within the limits aforeſaid, ſhall be ſtopped or detained by any embargo or other reſtraint, unleſs ſuch ſhips be particularly named in ſuch embargo.

37. Sect. 55. It ſhall be lawful for her Majeſty, by letters patent, to grant unto the company ſuch farther powers as ſhe ſhall think fit for the encouraging the ſaid trade, ſo as ſuch powers, *&c.* be not contrary to the laws of this realm, or the prerogative of the crown, or the privileges of the governor and company of the Bank of *England.*

38. Sect. 56. Upon importation of any goods by the company and in all other caſes were ſecurity is required to be given by the company to the crown, it ſhall be lawful for the commiſſioners and officers of the cuſtoms to take ſuch ſecurity by bonds under the common ſeal of the company.

39. Sect. 57. All bonds under the common ſeal of the company ſhall charge as well the annual fund payable to the company, as the other ſtock and effects of the company; and all bonds under the common ſeal whereby the company ſhall oblige themſelves to pay any money, ſhall be aſſignable at law, by indorſement upon ſuch bond under the hand of the perſon to whom ſuch money ſhall in ſuch bond be made payable, his executors, adminiſtrators, or aſſigns, and not

not otherwiſe; and every ſuch aſſignee may in failure of payment, maintain his action of debt againſt the company, as if ſuch bond had been made to ſuch aſſignee; and if any perſon ſhall counterfeit the common ſeal of the company, or ſhall forge or alter any bond under the common ſeal of the company, or ſhall offer to diſpoſe of any ſuch forged or altered bond (knowing the ſame to be ſuch) or ſhall demand the money therein contained or any part thereof, of the company, or their officers, (knowing ſuch bond to be forged *&c.*) with intent to defraud the company, or any other perſon, every perſon ſo offending (and being convicted) ſhall be guilty of felony, and ſuffer death without benefit of clergy. *This clauſe is re-enacted in the ſubſequent acts.*

40. Sect. 57. It ſhall not be lawful for the company to ſail into any the limits beyond the ſouthermoſt part of *Terra del fuego*, except only through the *Streights* of *Magellan*, or round *Terra del fuego*, nor to go from thence into the *Eaſt-Indies*, nor return to *Great Britain*, or any place in *Europe*, *Aſia*, *Africa*, or *America*, by any other way except through the *Streights* of *Magellan* or by *Terra del fuego*; and it ſhall not be lawful for the company, or any perſon licenſed by them to trade in any goods of the product or manufacture of the *Eaſt-Indies*, *Perſia*, *China*, or any other places within the limits granted to the united company of merchants in *England* trading to the *Eaſt-Indies* and not granted to the corporation to be erected by virtue of this act, or with any ſhips coming from the places aforeſaid, ſuch *India* goods as ſhall be exported from *Great Britain*, and alſo ſuch gold, ſilver, and wrought plate and goods, that are the produce or manufactures of the *Weſt-Indies*, or continent of *America* excepted. And it ſhall not be lawful for the company intended to be erected, or any perſons licenſed by them, to ſend any ſhip within the *South Seas*, from *Terra del fuego* to the northermoſt part of *America*, above three hundred leagues to the weſtward of the ſhores of *Chili*, *Peru*,

Mexico, *California*, or any other the lands of *America*, contained between *Terra del fuego* and the northermoſt part of *America*, upon pain that all ſuch ſhips going in, or returning from the *South Seas*, otherwiſe than as aforeſaid, and all the goods on board them, and likewiſe all the goods of the *Eaſt-Indies*, *Perſia*, *China*, or other the limits aforeſaid, ſo traded in, may be ſeized and double the value thereof ſhall alſo be forfeited by the owners or employers thereof; one third part of which forfeitures to be to her Majeſty, the other two third parts to the united company of merchants of *England* trading to the *Eaſt-Indies*, to be recoverd with coſts in any of her Majeſty's courts at *Weſtminſter*.

41. Sect. 58. It ſhall be lawful for her Majeſty by her letters patent, to direct a ſtock to conſiſt of 20*s*. upon every hundred pounds of the capital ſtock of the intended company, to be raiſed by the members thereof, in proportion to their ſtock, in ſuch manner as her Majeſty ſhall direct, ſo as no other of her Majeſty's ſubjects, be thereby excluded from the fiſhing trade; the ſaid ſtock to be kept apart, and imployed in the improving and carrying on the fiſhery for the benefit of the company.

42. Sect. 59. Provided that no money ſhall be called in from the members of the corporation for carrying on the fiſhery or other trade hereby granted, but by order of a general court of the company, called for that purpoſe, and whereof there ſhall be fourteen days notice in the *London* gazette.

43. Sect. 60. No perſon ſhall be elected governor, deputy governor, or director of the ſaid corporation, during the time that he ſhall be governor, *&c*. of the bank, or of the united company of merchants of *England* trading to the *Eaſt-Indies*; and every perſon elected governor, deputy governor or director, of the ſaid corporation, ſhall during the time he ſhall be ſuch governor, *&c*. be incapable of being choſen governor *&c*. of the bank, or of the *Eaſt-India* company.

44. Stat. 10 *Ann.* cap. 19 Sect. 185. It ſhall be lawful for the treaſurers of the navy and ordnance, and the pay-maſters of the guards, garriſons and land forces; or any other officers, or perſons who ſhall be entitled to any ſhares of the capital ſtock of "The "governor and company of merchants of *Great Brit-* "*ain* trading to the *South-Seas* and other parts of "*America*, and for encouraging the fiſhery," for the public uſe, by warrant from three of the commiſſioners of the treaſury to borrow any ſums of money upon credit of the ſaid public ſtock, and to mortgage ſuch ſtock to the lenders.

45. Sect. 186. All the money borrowed upon the credit of ſuch ſtock ſhall be applied by the ſaid treaſurers, *&c.* to ſuch public uſes whereunto the ſtock to be mortgaged would have been applicable.

46. Stat. 10 *Ann.* cap. 30. Upon one years notice upon repayment by parliament of the principal ſum, of which the capital ſtock of the company ſhall conſiſt, and of all arrears of the annuities, the duties by the act 9 *Ann.* cap. 21 appropriated may be diſpoſed of by parliament, and the ſaid yearly fund, and the annuities out of the ſame ſhall ceaſe; but the corporation after ſuch redemption of the yearly fund, ſhall continue for ever, and enjoy all forts, factories, and acquiſitions that they ſhall erect, and make within the limits preſcribed by the ſaid act, and the lands that ſhall be by them purchaſed in *Great Brit-* *ain* not exceeding 1000 *l.* *per annum*; and the members thereof ſhall have the ſole benefit of trade to the *South-Seas* and all other benefits, as if no ſuch redemption were had; and after ſuch redemption of the ſaid yearly fund by parliament, or after one moiety thereof ſhall be redeemed, the ſaid governor and company may by by-laws made in their general court, direct what ſhare in the remaining capital ſtock, and ſtock in trade, ſhall qualify the members to vote in any general court, and for electing a governor, ſub-governor, deputy governor and directors, and for the being elected in the ſaid offices.

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This proviſion is re-inacted in the ſeveral clauſes of redemption in the ſubſequent acts under this title.

47. Stat. 1 *Geo.* I. cap. 21 Sect. 1. The ſum of 822,032 *l.* 4*s.* 8*d.* ſhall be added to the capital ſtock of the *South-Sea* company; which with the ſame addition doth amount to 10,000,000 *l.* and the treaſurer of the navy ſhall write the ſaid ſum of 822,032*l.* 4*s.* 8*d.* in the companies books as part of the capital ſtock, and the ſaid additional ſtock ſhall be transferrable, and have the ſame dividends, and be ſubject to the ſame rules as the reſt of the capital ſtock.

48. Sect. 2. The treaſurer of the navy ſhall transfer to the caſhier of the company for the uſe of the company, the ſum of 583,339*l.* 8*s.* part of the ſaid ſtock ſo written in viz. 275,339*l.* 8*s.* 8*d.* part thereof, in ſatisfaction of their ſaid original fund for the half year to end at *Midſummer*, 1715, 300,000 *l.* more in ſatisfaction of their ſaid increaſed fund for the half year, to end at *Chriſtmas*, 1715, and the remaining 8000 *l.* in ſatisfaction of the 8000 *l. per annum*, for charges of management for one year ending at *Chriſtmas*, 1715.

49. Sect. 4. The ſum 238,693*l.* 4*s.* reſidue of the ſaid 822,032 *l.* 4*s.* 8*d.* ſhall be transferrable as the Treaſury ſhall direct, for the uſe of the navy, land forces, or other public ſervices.

50. Sect. 5. All the revenues which by 9 *Ann.* cap. 21 were appropriated for anſwering the yearly fund to be adjuſted by that act, as they ſhall ſeverally take effect, ſhall be applied for making good all payments which ſhall grow due on the encreaſed fund, and the yearly ſum of 8000 *l.* for management under ſuch penalties for miſapplying or detaining any monies applicable to the payments by this act directed, as by the ſaid act 9 *Ann.* cap. 21. or any other act relating thereto.

51. Sect. 6. The commiſſioners of the Treaſury ſhall quarterly, at the four uſual feaſts, or within twenty days after, cauſe an account to be made of all the monies which within the quarter then ended,

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ſhall have come into the Exchequer, of the ſaid duties; and if the monies ſhall appear to fall ſhort of one fourth part of the yearly ſums of 600,000*l.* being the intereſt of the ten millions at 6 *per cent.* and 8000 *l.* for the preceding quarter; then every ſum ſo deficient ſhall, on demand made by the company or their caſhier by writing left for the treaſurer of the navy at his pay office, or within twenty days after ſuch demand, be made good by the ſaid treaſurer, out of any monies then in his hands, or firſt coming into his hands, for the ſervice of the navy, with preference to all other payments; and the treaſurer of the navy is required (in default of money) to diſpoſe of any tallies, orders, or other parliamentary ſecurities, as ſhall be in his hands, for the ſervice of the navy, to diſcharge the deficiency due to the company, and within twenty days after ſuch demand to pay the ſame in money.

52. Sect. 7. If any treaſurer of the navy ſhall delay to make ſuch payments of any public monies which ſhall be in his hands, or (in default of money) to diſpoſe of any of the tallies, *&c.* and to apply the money for making good ſuch deficiency, he ſhall forfeit his office, and be liable to pay to the company the value of every ſum ſo neglected to be paid with treble damages and full coſts, to be recovered in any of his Majeſty's courts of record, wherein no privilege of parliament, *&c.* ſhall be allowed.

53. Sect. 8. There ſhall be annually, within twenty days after the 25th of *December*, an eſtimate in writing made by the treaſury, by a medium of three preceding years, of how much the revenues ſettled for payment of the ſaid yearly fund of 600,000 *l.* and 8000 *l.* will produce from the 25th of *December* preceding ſuch account and ending the 25th of *December* ſucceeding the ſame, and how much it is like to fall ſhort; and the Treaſury ſhall cauſe ſuch eſtimate to be laid before the commons in parliament, if ſitting; otherwiſe at their next ſeſſion, that ſufficient proviſion may be made for the navy for that year.

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54. Sect. 9. On one years notice, on repayment by parliament of the ſaid 10,000,000 *l.* and of all arrears of the ſaid yearly ſum of 600,000*l.* and 8000*l.* all the duties by 9 *Ann.* cap. 21 appropriated, may be diſpoſed of by parliament, and the ſaid yearly fund of 600,000 *l.* and 8000 *l.* ſhall ceaſe; but the corporation ſhall continue for ever and enjoy all ſuch forts, factories and other benefits, *&c.* to which they would have been intitled by 10 *Ann.* cap. 30. in caſe the redemption was made purſuant to that act.

55. Stat. 3 *Geo.* I. cap. 9 Sect. 2. After the nativity of *St. John Baptiſt.* 1718. The ſaid yearly fund of 600,000 *l.* ſhall ceaſe.

56. Sect. 3. The ſaid company ſhall have a yearly fund of 500,000 *l.* and the ſaid 8000 *l.* *per annum.* charged on the duties, *&c.* which by 9 *Ann.* cap. 21 were chargeable with the ſaid former yearly payment; and paid quarterly out of the duties beforementioned.

57. Sect. 8. Orders ſhall be ſigned by the Treaſury for payments of the monies to be paid to the company; which orders ſhall be effectual, and not determinable on the death or removal of any commiſſioners of the Treaſury, nor ſhall any commiſſioners of the Treaſury, *&c.* have power to revoke ſuch orders.

58. Sect. 9. Weekly, or otherwiſe, as monies of the ſaid duties, *&c.* ſhall be brought into the Exchequer, ſuch monies ſhall be iſſued on ſuch orders; ſo as ſuch weekly or other payments do not exceed the ſum of the quarterly payment which will grow due at the end of each quarter.

Theſe two laſt paragraphs are re-enacted in the ſubſequent acts under this title.

59. Sect. 12. If the produce of the ſaid duties, *&c.* ſhall be ſo deficient, that the money ariſing thereby ſhall not extend, to compleat the payment at the end of any quarter, the deficiency of ſuch quarter ſhall be ſupplied out of the overplus of the ſaid duties in any ſubſequent quarter; and in default thereof

thereof by the ſpace of half a year, ſuch deficiencies ſhall be made good out of the general fund, or out of money to be raiſed at the Exchequer for purchaſing annuities at 5*l. per cent.* for every ſuch deficiency: which annuities ſhall be charged on the general fund, and be payable and transferrable at the bank of *England*, till redemption by parliament.

60. Sect. 14. If at the end of any quarter there ſhall be a ſurplus of the monies brought into the Exchequer, of the ſaid duties, *&c.* over and above the money due for the ſaid yearly fund of 500,000*l.* *&c.* ſuch ſurplus ſhall attend the diſpoſition of parliament.

61. Sect. 16. The company may borrow money upon bills, *&c.* under their common ſeal or on credit of their capital ſtock, for ſuch intereſt, for any time not leſs than ſix months, as they ſhall think fit; which bills, *&c.* ſhall not be chargeable with ſtamp duties.

The laſt two clauſes are re-enacted in the ſubſequent acts under this title.

62. Sect. 18. The company ſhall continue a corporation, and ſhall receive the ſaid yearly ſum of 500,000*l.* and 8000*l.* till the ſame be redeemed; and ſhall enjoy all their forts, factories, *&c.* and ſole benefit of trade to the *South-Seas*.

63. Sect. 20. On one years notice to be given by authority of parliament at any of the quarterly feaſt days, and on repayment by parliament of the ſaid ten millions, and on payment of all arrears of the ſaid yearly ſums of 500,000*l.* and 8000*l.* the ſaid yearly ſums ſhall determine.

64. Sect. 21. If notice ſhall be given by parliament for redemption of the ſaid yearly ſums, and payment be made of any ſum not leſs than one million, at a time, and of all arrears then due of the ſaid yearly ſums, ſo much of the ſaid yearly ſum of 500,000*l.* as ſhall bear proportion to the monies paid in part of the principal, ſhall determine.

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65. Sect. 22. After redemption of all the ſaid yearly ſums of 500,000 *l.* and 8000 *l.* the ſaid duties, *&c.* ſhall be redeemed by parliament, and ſhall not be applied without authority of parliament.

66. Sect. 23. All the powers and directions, which by any former act or charter are granted to the company, (being not determined or altered) ſhall continue.

67. Sect. 24. All ſuch transfers of ſtocks in the company's books, as are not by this act exempted from ſtamp duties, ſhall not be liable to any higher duties.

68. Sect. 25. Any vote of the houſe of commons ſignified by their ſpeaker, to be delivered at the public office of the *South-Sea* company, ſhall be deemed a ſufficient notice within this act, for redeeming their ſaid funds.

This laſt proviſion is re-enacted in the clauſes of redemption in the ſubſequent acts under this title.

69. Stat. 5 *Geo.* I. cap. 19. Sect. 1. Reciting the the act 8 *Ann.* cap. 4, *for continuing part of the duties on coals, and granting new duties upon houſes, having twenty windows or more, &c.* for raiſing a yearly fund of 135,000 *l.* and that 1,500,000 *l.* was contributed on the ſaid act, and the annuities payable out of the ſaid fund, by virtue thereof amount to 32,625 *l. per annum*, in reſpect to the fortunate tickets, and to 102,374 *l.* 12 *s. per annum*, in reſpect of the tickets that did not prove fortunate, and 191,748*l.* 5*s.* 0 *d.* in arrear thereon and that the ſaid company is willing to permit the proprietors of the lottery annuities, for the reſidue of the term of thirty two years, to ſubſcribe their intereſt at eleven years purchaſe and a half, and to permit the proprietors of the ſum of 268,748 *l.* 5 *s.* to ſubſcribe the ſame, and to advance 778,750*l.* it is enacted, that all ſuch duties upon coals, culm and cinders, and on every dwelling-houſe inhabited, having twenty windows or more, as were granted by the ſaid act, 8 *Ann*, cap. 4. ſhall continue for ever.

70. Sect. 6. The proprietors of the ſaid lottery annuities, and of the arrears, amounting to 168,748 *l.* 5 *s.* may ſubſcribe ſuch annuities and arrears in books.

71. Sect. 11. All perſons by whom ſuch ſubſcriptions ſhall be made, *&c.* ſhall have in the increaſed capital of the company, ſhares as aforeſaid.

A ſum attended with annuities of 27,342 *l.* 4 *s.* 5 *d. was ſubſcribed in purſuance of this act, and a farther ſum in purſuance of* 6 Geo. I. cap. 4.

72. Sect. 12. The corporation ſhall advance into the Exchequer, towards diſcharging the national debts, the ſum of 778,750 *l.*

73. Sect. 14. If all the ſaid annuities and arrearages be not ſubſcribed before the 20th of *June*, 1719, the corporation ſhall advance into the Exchequer ſo much of the ſaid ſum, of 778,750 *l.* as ſhall bear proportion to the lottery-annuities and arrearages ſubſcribed; and ſuch of the ſaid lottery annuities and arrearages as ſhall not be ſubſcribed, ſhall be paid out of the produce of the ſaid duties.

74. Sect. 17. The value of the ſaid lottery annuities, at eleven years and a half's purchaſe, and the ſaid arrearages, or ſo much as will be ſubſcribed, and alſo the ſaid ſum to be advanced by the corporation, ſhall be deemed an additional ſtock of the corporation, and united to their preſent capital of ten millions.

75. Sect. 18. The company ſhall have, for the ſaid additional ſtock an annuity of *5 per cent. per annum*, united with their preſent annuity of 500,000 *l. per annum*.

76. Sect. 19. The ſaid corporation ſhall have towards the charge of management, an additional yearly ſum of 2000 *l.* or a ſum bearing the ſame proportion to 2000 *l. per annum*, as the additional ſtock, when adjuſted, ſhall bear to 2,500,000 *l.*

77. Sect. 21. The ſaid additional yearly fund, and the ſaid yearly ſum of 2000 *l.* or ſuch leſſer proportional ſum, ſhall be chargeable on the monies

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ariſing at the Exchequer, of the ſaid duties on coals &c. and houſes.

78. Sect. 22. So much of the fund of 135,000 *l.* *per annum*, as by the act 8 *Ann.* cap. 4. is applicable to the payment of ſuch of the ſaid lottery-annuities, as ſhall not be ſubſcribed into the ſtocks of the ſaid company before the 20th of *June*, 1719, ſhall be applied for payment of ſuch unſubſcribed lottery annuities.

79. Sect. 23. If at any time the produce of all the duties and revenues, by 3 *Geo.* I. cap. 9. and 8 *Ann.* cap. 4. and by this act, appropriated for payment of the yearly fund intended to be paid to the company, ſhall be ſo deficient, as not to diſcharge the payments at the end of any quarter, the deficiency ſhall be ſupplied out of the overplus monies of the ſaid duties ariſing in any ſubſequent quarter, and in default thereof, for half a year, ſuch deficiency ſhall be made good out of the general fund, or out of money to be raiſed at the Exchequer for purchaſing annuities at 5 *per cent. per annum*, for every ſuch deficiency; which annuities ſhall be charged on the general fund, and payable and transferrable at the Bank; and the diſcount thereof, which ſhall be neceſſary for converting the ſame into money, ſhall, by order of the Treaſury, be ſatisfied to the corporation out of the general fund.

80. Sect. 24. If at any time the produce of the ſaid duties on coals and houſes ſhall be ſo deficient, as that at the end of any year (reckoning the ſame to end at *Michaelmas*) the proportion of the ſaid yearly fund of 135,000 *l.* applicable by this act, for diſcharging the unſubſcribed lottery pay-tickets, ſhall not be ſufficient for that purpoſe, ſuch deficiency ſhall be made good, out of the firſt aid, to be granted in parliament.

81. Sect. 25. In caſe there be any ſurplus of the monies ariſing by the ſaid duties on coals, &c. and houſes, at the end of any year, ſuch ſurplus ſhall be reſerved

reſerved for the uſe of the public, and not be diſpoſed of but by authority of parliament.

82. Sect. 27. No member of the company, in reſpect of his having any ſhare therein, *&c.* ſhall be liable to any penalty, for not qualifying himſelf as perſons who ſhall take any office of profit or truſt.

83. Sect. 30. Contracts, bills, bonds, *&c.* under the common ſeal of the corporation, ſhall not be chargeable with any ſtamp duties.

84. Sect. 32. On one years notice to be given by parliament, at any one of the quarterly feaſt-days, and on repayment by parliament of the whole ſum whereof the company's capital ſtock, with the ſtock to be added, ſhall conſiſt, and on payment of all arrears, the ſaid yearly funds ſhall ceaſe.

85. Sect. 33. If at any time notice ſhall be given by parliament, for redemption; and payment, according to ſuch notice, be made of any ſum (not leſs than one million at a time) in part of the principal, and of all arrears; ſo much of the yearly fund, as ſhall bear proportion to the monies ſo paid in part, ſhall ceaſe.

86. Sect. 34. After redemption of all the ſaid yearly funds, the ſeveral duties, *&c.* ſhall be redeemed by parliament, and ſhall not be applied without authority of parliament.

87. Sect. 35. All things which by any former acts of parliament, or by any charters, are enacted, or granted concerning the ſaid corporation (being not altered or determined) ſhall continue.

88. Stat. 6. *Geo.* I. cap. 4. Sect. 1. The preamble recites 4 *Will.* and *Mar.* cap. 3. whereby certain duties of exciſe upon beer, *&c.* were granted for 99 years, and that the ſaid duties of exciſe now ſtand charged with annuities amounting to 124,409*l.* 1*s.* 9*d.* *per annum*, part of which were purchaſed on a term of 96 years, from the 25th of *January*, 1695, and other part upon a term of 89 years, from the 25th of *January*, 1702. the act 5 *Will.* and *Mar.* cap. 20. whereby ſeveral additional duties of exciſe upon beer,

&c. were granted to the crown, and that by that and ſubſequent acts, two ſeventh parts of the ſaid additional exciſe ſtand charged with annuities amounting to 15,236 *l.* 12 *s.* *per annum*, part of which were purchaſed upon a term of 96 years, from the 25th of *January*, 1695, and other part upon the term of 89 years, from the 25th of *January*, 1702. The act 12 *Will.* III. cap. 12. whereby it is enacted, that the weekly ſum of 3,700 *l.* out of the hereditary and other duties of exciſe ſhould be paid into the Exchequer, and 1 *Ann.* cap. 7. whereby the duties of exciſe, thereby granted during her Majeſty's life, together with the hereditary duties, were ſubjected to the ſaid weekly payment, and the act, 2 *Ann.* cap. 3. which enacted, that the ſaid weekly ſum, ſhould be for ever paid into the Exchequer; and that by virtue of the ſame and ſubſequent acts, the ſaid weekly payments ſtand charged with annuities, amounting to 104,745 *l.* 10 *s.* 6 *d.* half-penny *per annum* (above 1200 *l.* *per annum*, for charges of paying the ſaid annuities) purchaſed for 99 years, from the 25th of *March*, 1704. and 3 *Ann.* cap. 2. whereby ſeveral annuities amounting to 46,000 *l.* *per annum*, were purchaſed for 99 years from the 25th of *December* 1705, payable out of the ſaid weekly payment, and 4 *Ann.* cap. 6. whereby ſeveral annuities amounting to 184,242 *l.* 14 *s.* *per annum*, were purchaſed for 99 years, from the 25th of *March*, 1706, payble out of the one third ſubſidy, and the duties on coals, granted by 9 *Will.* III. cap. 13. and the duties of exciſe granted by 4 *Ann.* cap. 6, and the act 5 *Ann.* cap. 19, whereby ſeveral annuities amounting to 72,187 *l.* 10 *s.* *per annum*, were purchaſed for 99 years, from the 25th of *March*, 1707, payable out of the duties upon low wines, granted by 12 *Will.* III. cap. 11. and the duties payable by hawkers and pedlars, and upon ſtampt vellum, *&c.* by 5 and 6 *Will.* and *Mar.* cap. 21. and the ſurplus of the one third ſubſidy thereby granted, and out of the overplus monies of the other annuity funds, *&c.*

and

and 6 *Ann.* cap. 5. whereby annuities, amounting to 40,000 *l. per annum*, were purchaſed for 99 years, from the 25th of *March*, 1708, payable out of a yearly fund of 40,000 *l.* charged upon overplus-monies, and further grants of ſeveral duties therein mentioned. And 6 *Ann.* cap. 11. whereby ſeveral annuities amounting to 80,000 *l. per annum*, were purchaſed for 99 years, from the 24th of *June*, 1708, payable out of the half ſubſidy, and other duties thereby granted, all which annuities amount in the whole to 666,821 *l.* 8*s.* 3*d.* half-penny, *per annum*, and 8 *Ann.* cap. 7. whereby ſeveral annuities amounting to 81,000 *l. per annum*, were purchaſed for 32 years, from the 29th of *September*, 1710, payable out of a yearly fund, charged upon new duties of exciſe, and new duties upon pepper, raiſins, nutmegs, cinnamon, cloves, and mace, and other proviſions thereby made. And that by 8 *Ann.* cap: 4. certain additional duties were impoſed on coals, and dwelling houſes, for 32 years, from the 29th of *September*, 1710, and a yearly fund of 135,000 *l.* eſtabliſhed for paying of lottery annuities; and that purſuant to 5 *Geo.* I. cap. 19. the yearly ſum of 87,342 *l.* 4*s*, 5 *d.* (part of the ſaid yearly fund of 135,000 *l.*) has already been purchaſed by the *South-Sea* company, and together with 1,397 *l.* 9 *s.* 6 *d. per annum* more, for charges of management, is already added to the yearly fund of the corporation; and that the yearly ſum of 46,260 *l.* 6*s.* 1 *d.* (the reſidue of the ſaid yearly fund of 135,000 *l.*) is payable in lottery annuities, and upon pay-tickets, which yearly ſums ſo payable, during 32 years, amount to 127,260 *l.* 6*s.* 1 *d. per annum*, and that ſeveral principal ſums amounting to 16,546,482 *l.* 7 *s.* 1 *d.* farthing, are ſecured by ſeveral acts for which annuities at ſeveral rates are payable, till redemption of the funds charged, *viz.* 563,300 *l.* to compleat the ſum of 633,010 *l.* principal money, which by virtue of the late queen's letters patent, bearing date the 13th of *October*, 1713, grounded upon 12 *Ann.* Stat. 1. cap. 11. was charged with intereſt at 4 *l. per cent*, upon a yearly fund

of 35,000 *l.* payable for 32 years, from *Michaelmas*, 1713, out of the civil liſt revenues in the ſame patents mentioned; the ſum of 1,055,990 *l.* to compleat 1,157,360 *l.* which in reſpect of the blank-tickets drawn in the lottery for raiſing 1,400,000 *l.* for the ſervice of the year 1714, was charged with intereſt at 5 *l. per cent.* upon the yearly fund of 116,573 *l.* 12 *s.* payable out of certain duties on ſoap, paper, linnens, ſilks, callicoes, ſtuffs, ſtarch, exported coals, and upon ſtampt vellum, *&c.* granted for 32 years, from the 2d of *Auguſt*, 1714, by two acts, *viz.* 12 *Ann.* Stat. 2. cap. 9. and 1 *Geo.* I. Stat. 1. cap. 2. [*of theſe blanks* 865,250, *were ſubſcribed purſuant to this act, and the reſt were paid off.* *See* Stat. 2. Geo. II. cap. 3.] the ſum of 652,020 *l.* to compleat the ſum of 719,040 *l.* which in reſpect of the prize tickets in the laſt mentioned lottery, was charged upon the ſaid yearly fund of 116,573 *l.* 12 *s.* at 4 *l. per cent.* [of theſe prizes 538,720 *l.* were ſubſcribed, and the reſt paid off. See Stat. 2 *Geo.* 2. cap. 3.] and ſeveral ſums amounting to 1,079,000 *l.* principal monies were advanced for the uſe of the public, purſuant to two acts paſſed in 1 *Geo.* I. cap. 19. for raiſing 910,000 *l.* upon a fund of 45,500 *l. per annum*, and the other cap. 21. for raiſing 169,000 *l.* upon a fund of 8,450 *l. per annum*, charged upon the aggregate fund, and other proviſions therein mentioned; for which ſums amounting to 1,079,000 *l.* the contributors, are intitled to annuities of 5 *per cent*, payable by the caſhier of the bank; and the annuities amount to 53,950 *l. per annum* (above 650 *l. per annum* for charges of management) but ſubject to redemption, and in purſuance of 3 *Geo.* I. cap. 7. Several annuities at 5 *per cent. per annum*, amounring to 476,717 *l.* 17 *s.* 8 *d. per annum*, are payable by the caſhier of the bank, for ſeveral principal ſums, amounting to 9,534,357 *l.* 13 *s.* 11 *d.* three farthings, *viz.* on the act for the 10 *l.* lottery, 1711. 1,672,821 *l.* 10 *s.* on the act for the claſs lottery of the ſame year, 2,563,768 *l.* 4 *s.* and on the act for the 10 *l.* lottery

1712,

1712, 2,292,367*l.* 7*s.* and on the act for the claſs lottery for the ſame year 2,346,745*l.* 19*s.* 6*d.* and for the moiety of the debt due to the bankers 658,654*l.* 13*s.* 5*d.* three farthings, and in purſuance of the ſaid act 3 *Geo.* I. cap. 7 ſeveral annuities of 4*l. per cent* amounting to 102,036*l.* 13*s.* 2*d. per annum* are payable by the caſhier of the bank for principal ſums amounting to 2,550,916*l.* 8*s.* 8*d.* half-penny, viz. 2,672*l.* 10*s. per annum*, for monies contributed by tallies of ſol, to ſatisfy principal and intereſt, amounting to 66,812*l.* 9*s.* 2*d.* which remained unſatisfied on the regiſter of loans founded on the act for the duties on low wines, *&c.* which expired on the 24th of *June* 1714, 13,871*l.* 14*s.* 8*d. per annum.* for tallies of ſol amounting to 346,793*l.* 7*s.* 10*d.* which remained unſatisfied on the regiſter of loans founded on the act for the duty on candles which expired on the 1ſt of *May*, 1715, 20,365*l.* 1*s.* 10*d. per annum* for tallies of ſol, to ſatisfy a deficiency amounting to 509,127*l.* 5*s.* 6*d.* to make good his Majeſty's ſupply for the year 1716; 967*l.* 16*s.* 9*d. per annum*, for tallies of ſol, to ſatisfy ſeveral bills of exchange amounting to 24,195*l.* 18*s.* 1*d.* drawn for the ſervice of the expedition to *Canada.* [The principal ſum of 198,958*l.* 8*s.* 3*d.* of theſe annuities for tallies of ſol was left unſubſcribed and was redeemed. See Stat 13 *Geo.* I. cap. 3.] 64,159*l.* 9*s.* 11*d. per annum*, for principal ſums amounting to 1,603,987*l.* 8*s.* 1*d.* half-penny contained in army debentures, [the principal ſum of 393,194*l.* 14*s.* 5*d.* half-penny, was left unſubſcribed of theſe annuities for army debentures] all which annuities computed at 5*l. per cent*, and 4*l. per cent*, in purſuance of the ſaid act, 3 *Geo.* I. are payable out of the general fund; and in purſuance of a clauſe in the land-tax, act. 5 *Geo.* I. annuities amounting to 5,515*l.* 12*s. per annum*, after the rate of 5*l. per cent.* were made payable by the caſhier of the bank, out of the general fund, to the Treaſurer of the navy, to make good a deficiency of 110,312*l.* 17*s.* 4*d.* and in purſuance of

5 *Geo.* I. (*a private act*) for relief of *Edward Clent*, esq; for an army debenture lost in the pay office, an annuity amounting to 23*l.* 8*s.* 3*d.* farthing *per annum*, after the rate of 4*l. per cent*, became payable by the cashier of the bank out of the general fund, for the principal sum of 585*l.* 7*s.* 1*d.* due on the said lost debenture; and in pursuance of 5 *Geo.* I. cap. 3 several annuities amounting to 20,000*l.* at 4*l. per cent* for principal sums amounting to 500,000*l.* contributed to a lottery founded on that act, are payable by the cashier of the bank out of a yearly fund of 20,000*l.* charged on the aggregate fund (*the principal sum of* 58,300*l. of this lottery annuity was left unsubscribed, and paid off*,) and in pursuance of 5 *Geo.* I. cap. 9 the sum of 500,000*l.* was raised by a lottery; which together with interest at 4*l. per cent*, to be paid at the Exchequer out of a yearly fund of 30,559*l.* 14*s.* settled for thirty-two years from the 25th of *March*, 1719, and charged upon certian duties on coals [*of this lottery annuity* 434,605*l. was subscribed and the rest paid off*,] so that all the principal sums for which interest is payable out of the said redeemable funds at 5*l. per cent*, amount to 1,055,990, and at 4*l. per cent* to 1,715,320, and the principal sums for which the said annuities are payable at 5*l. per cent*, amount to 10,723,670*l.* 11*s.* 3*d.* three farthings, and the annuities payable for the same to 536,183*l.* 10*s.* 6*d.* three farthings and the principal sums for which annuities are payable at 4*l. per cent*, amount to 3,051,501*l.* 15*s.* 9*d.* half-penny, and the annuities to 122,060*l.* 1*s.* 5*d. per annum*, and that the *South-Sea* company is willing to take in by purchase or subscription the said annuities, payable during the said terms of 96, 89 and 99 years (computed to amount to 666,821*l.* 8*s.* 3*d.* half-penny) provided, that for such annuities they may have an addition to their capital stock of twenty years purchase; and the company are also willing to take in the lottery-annuities computed to amount to 46,260*l.* 6*s.* 1*d. per annum* for 23 years from *Michaelmas* 1719, provided that for every such lottery annuity,

annuity, they may have an addition made to their capital ſtock of fourteen years purchaſe; and they are alſo willing to take in the abovementioned annuities, (computed to amount to 81,000 *l. per annum*) for the term of twenty-two years and three quarters from *Chriſtmas* 1719, provided that for every ſuch annuity ſo taken in, they may have an addition to their ſtock of fourteen years purchaſe; and they are likewiſe willing to take in the redeemable debts and annuities (computed to amount to 16,546,482 *l.* 7 *s.* 1 *d.* farthing) either by purchaſe, ſubſcriptions or paying them off, provided that they may have an addition of 100 *l.* to their capital for every 100 *l.* taken in *&c.* and then it is enacted, that the duties of exciſe upon beer, ale, cyder, and other liquors granted by 8 *Ann.* cap. 7. and the new duties upon pepper, raiſins, nutmegs, cinnamon, cloves and mace by the ſame act, ſhall have continuance for ever, and that the above yearly ſum of 35,000 *l.* appropriated by her late Majeſty's letters patent out of the exciſe ſhall have continuance for ever; and that the additional duties upon ſoap, and upon paper, paſteboard, millboards, and ſcaleboards, and upon chequered, and ſtriped linens, and upon linens printed, painted, ſtained, and died *after*, the manufacture, or in the thread or yarn, *before*, in foreign parts, and upon ſilks, callicoes, linnen and ſtuffs printed, *&c.* in *Great Britain*; and upon ſtarch, and upon coals exported, and upon ſeveral things engroſſed upon ſtampt vellum parchment, and paper, which by the ſaid act of 12, *Ann.* cap. 9 and 1 *Geo.* I. cap. 2 were granted for thirty-two years from the 2d. of *Auguſt* 1714, ſhall have continuance for ever; and that the impoſitions which by 5 *Geo.* I. cap. 9 were granted upon coals *&c.* brought into the river *Thames* within the liberty of the city, ſhall be continued for ever.

89. Sect. 2. The ſeveral duties by this act made perpetual ſhall be raiſed in manner as by the ſaid former acts preſcribed.

90. Sect. 3. Where any alteration is made by any other act now in force concerning the ſaid duties, ſuch alterations ſhall be obſerved.

91. Sect. 4. The monies ariſing by the ſaid duties ſhall be brought into the Exchequer, that the *South-Sea* company may out of the ſame be ſecured the payment of ſuch annuities as ſhall become payable to them in purſuance of this act.

92. Sect. 5, 6. The commiſſioners of the Treaſury ſhall conſtitute managers who ſhall prepare books, wherein ſhall be entered the particulars following, viz. one book for the names of perſons entitled to the annuities payable for the long terms of 96, 89, and 99 years, which ſhall be taken in, and the particular duties whereupon every ſuch annuity was charged; and there ſhall be entered in the ſame book ſuch prices as ſhall be agreed on between the corporation and the proprietors; and there ſhall likewiſe be entered the additions which are to be made to the capital ſtock of the company, after the rate of twenty years purchaſe for taking in the ſaid long terms.

93. Sect. 7. The ſaid managers ſhall prepare books wherein ſhall be entered the particulars following, viz. the names of perſons entitled to any of the annuities payable out of the ſaid yearly fund of 81,000 *l.* for 22 years and three quarters from *Chriſtmas* 1719 who ſhall ſubſcribe the ſame, and every annuity ſo payable, which ſhall be taken in, and the duties whereupon ſuch annuity was charged, and the prices agreed upon, and likewiſe the additions which are to be made to the capital ſtock of the company, after the rate of 14 years purchaſe, for taking in the ſaid annuities.

94. Sect. 8. The managers ſhall alſo prepare books wherein ſhall be entered the particulars following, viz. the names of the perſons entitled to any of the ſaid annuities payable upon unſubſcribed lottery tickets of the year 1710, out of the remainder of the yearly fund of 135,000 *l.* for twenty three

years

years from *Michaelmas* 1719 (being the remainder of the term of thirty two years,) who ſhall ſubſcribe the ſame, and every annuity ſo payable which ſhall be taken in and the duties upon which ſuch annuity was charged, and the prices agreed on, and likewiſe the additions to be made to the capital ſtock of the company, after the rate of fourteen years purchaſe, for taking in the ſaid lottery annuities.

95. Sect. 9. The ſaid managers ſhall prepare other books wherein ſhall be entered every principal ſum carrying intereſt at 5 *l. per cent*, which ſhall have been paid off by the company to the proprietors of the ſaid principal ſums computed to amount together to 11,779,660 *l.* 11*s.* 3*d.* three farthings, and the names of the proprietors and the duties on which the intereſt of 5 *l. per cent*, was charged; and there ſhall be alſo entered the additions which are to be made to the company's capital ſtock of 100 *l.* for every 100 *l.* ſo paid off.

96. Sect. 10. The ſaid managers ſhall alſo prepare other books, wherein ſhall be entered every principal ſum paid off by the company, to the proprietors of the ſaid principal ſums, computed to amount to 4,766,821 *l.* 15*s.* 9*d.* half-penny, and the names of the proprietors, and the duties out of which the ſame were payable and the new additions to be made to the company's ſtock for every 100 *l.* ſo paid off.

97. Sect. 19, 20. The *South-Sea* company may redeem all or any the redeemable debts above mentioned, amounting to 16,546,482 *l.* 7*s.* 1*d.* farthing, and the intereſt or annuity in reſpect thereof, to the proprietors ſhall ceaſe, and in lieu thereof, a like annuity ſhall be paid to the *South-Sea* company till the 24th of *June*, 1727, and from thence after the rate of 4 *l. per cent*, till redemption by parliament, ſo as ſuch debts be paid off at the rate of 100*l.* for every 100 *l.* principal.

98. Sect. 21. The company may before the firſt of *March*, 1721, take in by purchaſe or ſubſcription all or any the abovementioned annuities of the ſaid

terms

terms of 96, 89 and 99 years, computed to 666,821*l.* 8*s.* 3*d.* half-penny *per annum*, and the lottery annuities computed to 46,260*l.* 6*s.* 1*d.* *per annum* for the ſaid term of twenty-three years from *Michaelmas* 1719. and alſo the abovementioned annuities, computed to 81,000 *l.* *per annum*, for the ſaid term of twenty-two years and three quarters from *Chriſtmas* 1719, at ſuch prices as ſhall be agreed upon, ſo as ſuch prices be paid by the firſt of *March* 1721.

99. Sect. 27. The ſaid managers ſhall make up diſtinct accounts of all the annuities and debts that ſhall have been taken in, viz. one account of all annuities taken in as part of the annuities computed to 666,821*l.* 8*s.* 3*d.* half-penny, *per annum*; another account of all the annuities taken in as part of the annuities computed to 81,000 *l.* *per annum*; another account of the unſubſcribed lottery annuities taken in as part of the annuities computed to 46,260 *l.* 6*s.* 1*d.* *per annum*; another account of the principal ſums taken in as part of the abovementioned ſums computed to 563,300*l.* at 4 *l.* *per cent.* by virtue of her Majeſty's letters patent, another account of all the principal ſums taken in as part of the abovementioned ſums computed to 1,055,990*l.* at 5*l.* *per cent*, and 652,020*l.* at 4*l.* *per cent.* by virtue of the acts 12 *Ann.* Stat. 2 cap.9 and 1 *Geo.* I. Stat. 1 cap. 2. Another account of all the principal ſums taken in as part of the abovementioned ſum of 500,000 *l.* at 4 *l.* *per cent*, by one of the lottery acts of 5 *Geo.* I, and another account of all the principal ſums taken in as part of the abovementioned 10,723,670 *l.* 11*s.* 3*d.* three farthings, for which annnuities are payable by the caſhier of the bank at 5 *l.* *per cent*, or as part of the abovementioned 3,051,501*l.* 15*s.* 9*d.* half-penny, for which annuities are payable by the ſame caſhier at 4 *l.* *per cent.*

100. Sect. 30. The values at twenty years purchaſe for ſuch annuities computed to 666,821 *l.* 8*s.* 3*d.* half-penny *per annum*, and at fourteen years purchaſe for the annuities computed to 81,000*l.* *per annum*;

num; and, at fourteen years purchaſe fer the lottery annuities computed to 46,260*l.* 6*s.* 1*d.* *per aunum*, and the values at 6*l.* *per cent*, of the redeemable debts computed to 16,546,482 *l.* 7*s.* 1*d.* farthing, which ſhall be taken in or paid off, ſhall be added to the preſent capital ſtock of the company; and the company for every addition to their capital, after the 24th of *June*, 1727, till redemption by parliament, ſhall have an addition to their yearly fund of 4*l.* *per cent.*

101. Sect. 32. The Treaſury ſhall ſettle the addition to be made to the company's capital ſtock, according to the values ſpecified in ſuch accounts.

102. Sect. 33. The annuity payable to the company after *Midſummer* 1727. at 4*l.* *per cent.* till redemption, ſhall grow due quarterly at the four uſual feaſts (nevertheleſs to be ſatisfied by weekly or other payments) out of the monies to ariſe of the duties now chargeable with the ſaid annuity; and the ſeveral additions to the company's annuity by virtue of this act ſhall be charged in like manner, and in caſe any of the ſaid particular duties are temporary every ſuch an additional annuity till redemption ſhall be payable out of the like duties by this act continued for ever.

103. Sect. 34. The Treaſury ſhall cauſe an eſtimate to be taken of the whole annual coſt to the public, for paying and accounting for all the annuities and debts ſpecifyed in this act, and upon receiving the abovementioned accounts from the managers, ſhall allow to the company a proportion of the coſts for the annuities and debts then appearing to be taken in, viz. as 11,746,844*l.* 8*s.* 10*d.* (being their preſent capital) is to the yearly ſum of 9,397*l.* 9*s.* 6*d.* (being their preſent allowance for management) ſo the ſtock, which they are to have for the annuities and debts by ſuch accounts appearing to be taken in, ſhall be to the proportional ſum to be allowed to the company towards their charges; ſo as all the proportional ſums laſt mentioned do not exceed one

years

year's coſt for paying and accounting for all the annuities and debts before mentioned.

104. Sect. 35. The ſums for charges of management ſhall be paid to the company as their preſent annuity, till the ſame funds be redeemed, and ſhall be charged upon the duties by this act charged with the company's annuity.

105. Sect. 36. The duties charged with the company's annuity, and the additions to be made thereto, ſhall be levied according to the directions, and with ſuch drawbacks and allowances, and under ſuch penalties, as are preſcribed by former acts, and ſhall be entered in books in the offices of the auditor of the receipt and clerk of the pells, to which all perſons concerned ſhall have acceſs without fee.

106. Sect. 42. Such of the ſaid annuities and debts as ſhall not be taken in or paid off in purſuance of this act, and the intereſt of the ſame, ſhall continue to be paid to the proprietors at the ſame offices, and out of the ſame duties as if this act had never been.

107. Sect. 44. The *South-Sea* company (in conſideration of the liberty given them of increaſing their capital ſtock by taking in, or paying off all the redeemable debts, before computed to 16,546,482 *l.* 7*s.* 1*d.* farthing, ſhall pay into the Exchequer towards diſcharging the principal and intereſt of ſuch national debts as were incurred before the 25th of *December*, 1716, the ſum of 4,156,306 *l.* 4*s.* 11*d.*

108. Sect. 45. The ſame corporation (in conſideration of the increaſe made to their capital ſtock by taking in the ſaid annuities for the terms of 96, 89 and 99 years, and 32 years) ſhall pay into the Exchequer four years and a half's purchaſe, upon all ſuch of the annuities as ſhall be taken in, to be applied towards diſcharging the ſaid national debts incurred before the 25th of *December*, 1716.

109. Sect. 46. The ſame corporation ſhall pay into the Exchequer towards diſcharging the ſaid national debts one years purchaſe upon all ſuch of the

ſaid

ſaid annuities of 96, 89 and 99 years, as ſhall not be taken in by the firſt of *March*, 1721.

110. Sect. 48. The company may call in from their members, or by opening books of ſubſcription, or by granting annuities redeemable by the company, or by any other method raiſe, any ſums of money, as in a general court ſhall be ordered; and if any member ſhall neglect to pay his ſhare at the times appointed by notice in the gazette, and fixed on the *Royal-Exchange*, it ſhall be lawful for the company, not only to ſtop the dividend payable to ſuch member, but alſo to ſtop the transfers of the ſhares of every defaulter and to charge him with intereſt at 5 *l. per cent.* and if the principal and intereſt be unpaid three months, the court of directors ſhall have power to authoriſe perſons to ſell ſo much of ſuch defaulters ſtock as will ſatisfy the ſame; and the company in a general court may cauſe any money ſo called in to be divided amongſt the members.

111. Sect. 49. The company may borrow money upon any contracts, bills, or bonds under their common ſeal, or upon credit or their ſtock, for any time not leſs than ſix months.

112. Sect. 52. The money ſo called in from the members ſhall (if the company think proper) be deemed an additional ſtock; nevertheleſs the company in reſpect of ſuch ſtock, ſhall not be intitled to any increaſe of their annuity.

112. Sect. 57. The company ſhall continue for ever one body corporate, by the name of *the governor and company of merchants of* Great Britain *trading to the* South-Seas, *and other parts of* America, *and for encouraging the fiſhery*, and ſhall enjoy the ſaid funds till redemption, and ſhall enjoy for ever all their forts and acquiſitions, ſole benefit of trade to the *South-Sea*, *&c.*

114. Sect. 58. Upon repayment by parliament of the whole ſum whereof the company's capital ſtock ſhall conſiſt, and upon payment of all arrears to the quarterly feaſt then next preceding, and till payment

ment be made, the funds and yearly ſums for management ſhall ceaſe.

115. Sect. 59. Upon repayment by parliament of any ſum (not leſs than one million at a time) in part of the ſaid capital, and upon payment of all arrears upon their yearly fund, then ſo much of their annuity as ſhall bear proportion to the monies paid in part of the principal ſhall ceaſe.

116. Sect. 60. After ſuch redemption, ſo much of the revenues applicable thereunto ſhall be underſtood to be redeemed by parliament, and ſhall not be iſſued without authority of parliament; nevertheleſs the corporation ſhall remain for ever, and ſhall enjoy all their forts, acquiſitions, *&c.*

117. Sect. 61. All powers, Penalties, *&c.* concerning the company or perſons employed under them ſhall for ever continue.

118. Sect. 66. If the ſub-governor, deputy-governor, and directors, or other members of the company, ſhall purchaſe any lands or revenues belonging to the crown, upon the account of the corporation, or lend money by way of loan or anticipation, on any branch of the revenue, other than ſuch parts only on which a credit of loan is granted by parliament; ſuch ſub-governors, *&c.* being convicted of conſenting, agreeing or approving of ſuch lending, *&c.* ſhall forfeit treble the value of the money ſo lent, one fifth to the informer, to be recovered in the courts at *Weſtminſter*, and the reſidue to be diſpoſed of, towards public uſes, as ſhall be directed by parliament.

119. Sect. 67. The ſums to be paid into the Exchequer by the *South-Sea* company (over and above the monies of the ſinking fund, to be applied for leſſening public debts,) ſhall be iſſued in manner following, *viz.* firſt ſuch public debts carrying intereſt at 5 *per cent.* or more, incurred before the 25th of *December*, 1716, (not being part of the company's capital ſtock) as may be redeemed before the 25th of *December*, 1722, ſhall be paid off; then the remainders of the ſaid ſums ſhall be applied towards paying

off

off ſo much of the capital ſtock of the company, as ſhall carry intereſt at 5 *per cent.* and the Treaſury are to cauſe all the monies ariſing of the ſaid ſums to be applied in the manner hereby preſcribed.

120. Stat. 6. *Geo.* I. cap. 11. Sect. 50. If any perſon ſhall forge or alter any receipt for ſubſcriptions, or any warrant for divdends, under the hands of the officers of the *South-Sea* company, or any endorſement or writing thereon, or therein, or ſhall tender any ſuch forged or altered receipt or warrant, or any receipt or warrant with ſuch counterfeit endorſment or writing, knowing the ſame to be ſo forged, *&c.* to the company or any of their officers, or ſhall offer to diſpoſe of the ſame, with intent to defraud the company, or any other perſon; every ſuch offender (being convicted) ſhall be adjudged a felon without benefit of clergy.

121. Stat. 7. *Geo.* I. cap. 5. Sect. 26. On repayment by parliament, to the *South-Sea* company, of any ſum not leſs than 500,000*l.* at a time in part of the principal monies of the capital ſtock belonging to the company, and on payment of all arrears of their annuities and charges of management, ſo much of their annuities, as ſhall bear proportion to the monies ſo paid in part of the principal ſhall ceaſe.

122. Stat. 7. *Geo.* I. Stat. 2. Sect. 1. The ſum of 4,156,306*l.* 4*s.* 11*d.* which in purſuance of 6 *Geo.* I. cap. 4. Sect. 44. the *South-Sea* company was to pay into the Exchequer, and the ſeveral further ſums, after the rate of four and a half years purchaſe, and one years purchaſe, ſhall be diſcharged.

123. Sect. 2. The ſum of two millions, part of the capital ſtock, which ſhall belong to the ſaid company, ſhall be annihilated, and a proportional part of their annuities ſhall ceaſe for the benefit of the public.

124. Sect. 3. The company ſhall make an addition of 33*l.* 6*s.* 8*d.* in ſtock, upon every 100*l.* already allowed to the proprietors, of the redeemable annuities, and of the ſecond, third and fourth

money

money-ſubſcriptions, which together with the ſtocks already allowed them, at the rate of 400 *l. per cent.* ſhall be in full diſcharge of their redeemable annuities which were ſubſcribed, and in full diſcharge of the monies paid on the ſaid ſubſcriptions; and no more money ſhall be demanded by the company on any of the four money-ſubſcriptions.

125. Sect. 4. For a further relief to be given to the proprietors of the irredeemable annnities in the ſecond ſubſcription, by an addition of ſtock valued at 150 *l. per cent.* the company ſhall make an addition in ſtock to the ſaid proprietors, over and above the ſtock allowed them by a reſolution of the general court, which additions will be in the proportions following, *viz.* on every annuity of 100 *l.* ſubſcribed for the remainder of 99 years, on the ſecond ſubſcription, 203 *l.* 6 *s.* 8 *d.* ſtock; on every annuity of 98 *l.* ſubſcribed for the *remainder* of 96, or 89 years, called fourteen *per cent*, in the ſaid ſecond ſubſcription, 178 *l.* 5 *s.* 4 *d.* ſtock; on every 90 *l. per annum* ſubſcribed for the remainder of 32 years, called nine *per cent.* in the ſecond ſubſcription, 73 *l.* 9 *s.* 4 *d.* ſtock, on every annuity of 100 *l.* ſubſcribed for the remainder of 32 years, called benefits of the lottery 1710, in the ſecond ſubſcription, 65 *l.* 16 *s.* 8 *d.* ſtock; on every 98 *l. per annum*, ſubſcribed for the remainder of 32 years called blank pay-tickets of the ſaid lottery, in the ſecond ſubſcription, 126 *l.* 14 *s.* 8 *d.* ſtock.

126. Sect. 5. All the increaſed capital ſtock, which was gained by the company, by taking in public debts, after the diſtribution of ſuch parts as are by this act to be diſtributed, ſhall be divided amongſt all the proprietors of the capital ſtock.

127. Sect. 6. Such perſons (brokers excepted) as ſince the 25th of *March*, 1720, have borrowed money of the company upon ſtock, who ſhall pay to the caſhier of the company, 10 *per cent.* upon the ſums ſo borrowed, by the 25th of *June*, 1722, ſhall be diſcharged from all further demands of the company,

and

and the ſtock ſo pledged ſhall be abſolutely veſted in the company.

The like clauſe for money borrowed on ſubſcription receipts.

128. Stat. 8 *Geo* I. cap. 21. Sect. 1. It ſhall be lawful for the *South-Sea* company to ſell their ſtock, as well that pledged to the company, as that which was allowed for ſubſcription-receipts pledged as aforeſaid, or any part of their fund, payable at the Exchequer, not exceeding 200,000 *l.* a year by lottery, or otherwiſe.

129. Sect. 4. If the company ſhall raiſe any of the money, by ſelling part of their annuities at the Exchequer, at 5 *l. per cent.* (ſuch part not to exceed 200,000 *l per annum)* the contractors for purchaſing the ſame, ſhall be capable in law, to hold and enjoy the parts ſo purchaſed.

130. Sect. 7. The value to be computed at 20 years purchaſe, for ſuch parts of the annuities, as ſhall be ſo purchaſed, ſhall become a capital ſtock of the perſons, or bodies politic, who ſhall purchaſe the ſame; and in caſe the purchaſe be made by any body corporate, ſuch body may unite the capital ſtock ſo created to their own capital; and every member of ſuch body corporate, ſhall have credit for his ſhare in the ſtock, ſo encreaſed; and the capital ſtock of the *South-Sea* company ſhall be leſſened ſo much as the parts ſold ſhall amount to.

131. Sect. 10. It ſhall be lawful for any bodies corporate, who ſhall have purchaſed any parts of the ſaid annuities, for enabling themſelves to pay for the ſame to raiſe money, by opening books for taking in ſubſcriptions for ſale of any part of their capital ſtock ſo created, or by making calls of money from their members, or by borrowing money.

132. Sect. 11. The capital ſtock which any perſons in purſuance of this act, ſhall be intitled unto, and the parts of the annuities of the *South-Sea* company which ſhall be ſo purchaſed, and the particular ſhare of each member of ſuch bodies corporate in the

ſame, ſhall be a perſonal and not a real eſtate, and ſhall be free from taxes; and if any body corporate ſhall be entitled thereto, the members of ſuch body may transfer their ſhares in the books of the company, in ſuch methods as is preſcribed for transfers of original ſtock, *&c.* or may deviſe the ſame by will, and the parts of the annuities which ſhall be purchaſed by perſons (not being a body corporate) may be aſſigned by writing under their hands and ſeals; and ſuch aſſignments may be made *toties quoties*; ſo as ſuch aſſignments be notified in the books of the auditor of the receipt; and may be deviſed by will, ſo as ſuch will be entered in the ſame office within three months after the deceaſe of the teſtator.

133. Sect. 12. No member of any body corporate, which ſhall be intitled to ſtock, purſuant to this act, ſhall in reſpect of his ſhare therein, be liable to be a bankrupt, and the ſtock of ſuch bodies corporate, ſhall not be liable to foreign attachment.

134. Sect. 13. The purchaſers of any parts of the annuities of the *South-Sea* company, ſhall hold and enjoy the ſame, till the parts ſo purchaſed be redeemed; and any body corporate, purchaſing ſuch parts of the ſaid annuities, ſhall continue a corporation, till the redemption of the parts purchaſed by them.

135. Sect. 14. On repayment by parliament to the perſons, or bodies corporate, who ſhall be intitled to the capital ſtock, in reſpect of the annuities ſo purchaſed, of the whole ſum, whereof the ſaid capital ſhall conſiſt, and of all arrears thereof, the part of the annuities ſo purchaſed ſhall ceaſe.

136. Sect. 15. On repayment of any ſum (not leſs than one eighth part of ſuch capital ſtock at a time) in part of the principal, and of all arrears; ſo much of the ſaid purchaſed annuities, as ſhall bear proportion to the monies ſo paid, in part of the prinpal, ſhall ceaſe.

137. Sect.

137. Sect. 16. After redemption of the annuities, ſo much of the duties, *&c.* applicable thereto, ſhall be underſtood to be redeemed by parliament.

138. Sect. 17. So much of the capital ſtock of the *South-Sea* company, as ſhall remain after ſale of ſuch parts as ſhall be ſold purſuant to this act, ſhall be redeemable by parliament, upon payment of ſuch ſums, whereof their capital ſhall conſiſt, and of all arrears of their annuities, and of the yearly ſums allowed for charges of management; and the redemption of their capital may be made upon payment, at one time, or ſeveral times, not being leſs than one million at a time

139. Stat. 8 *Geo.* I. cap. 22. Sect. 1. If any perſon ſhall forge or counterfeit, or procure to be forged, *&c.* or knowingly and wilfully aſſiſt in the forging, *&c.* any letter of attorney, or other authority, or inſtrument, to transfer any ſhare in a capital ſtock eſtabliſhed by parliament, or to receive any dividend attending ſuch ſhares, or annuity in reſpect whereof the proprietors have ſuch ſhares; or ſhall forge, *&c.* the name of any of the proprietors of ſuch ſhares, annuities or dividends, to any ſuch inſtrument; or ſhall knowingly and fraudulently demand or endeavour to have ſuch ſhares transferred, or ſuch annuities or dividends received, by virtue of ſuch forged authority; or ſhall falſly and deceitfully perſonate any of the proprietors of the ſaid ſhares, *&c.* thereby transferring, or endeavouring to transfer the ſtock, or receiving or endeavouring to receive the money of ſuch proprietor; every ſuch perſon being thereof convicted, ſhall be guilty of felony, without benefit of clergy.

140, Stat. 8 *Geo.* I. cap. 22. Sect. 2. The Treaſury ſhall rectify the errors of thoſe employed in taking ſubſcriptions, for increaſing the capital ſtock of the *South-Sea* company, in an inſtrument dated the 9th of *December*, 1720, by a new inſtrument, thereby declaring, that principal ſums amounting to 67,831 *l.* 6 *s.* 10 *d.* ſhall be added to the principal

ſums, amounting to 11,172,593 *l.* 15 *s.* 10 *d.* by the ſaid inſtrument declared to be added to the capital ſtock of the ſaid company, whereof 7,558,315 *l.* 10 *s.* 3 *d.* as well as the ſaid 67,831 *l.* 6 *s.* 10 *d.* omitted by miſtake, was for bank annuities payable by 3 *Geo.* I. cap. 7.

141. Sect. 3. For rectifying a miſtake which tends to the prejudice of the public, the Treaſury ſhall by memorandums, endorſed on the inſtrument, dated the 28th of *September*, 1720, and upon the ſubſcription-books, wherein the miſtakes are inſerted, cauſe the ſum of 400 *l.* part of the additional capital ſtock of 8,551,618 *l.* 15 *s.* by the ſaid laſt mentioned inſtrument declared to be added to the ſaid capital ſtock to be abated.

142. Sect. 4. The Treaſury may inſpect any duplicates tranſmitted by the managers for taking ſubſcriptions for increaſing the capital ſtock of the company, and if they find any errors therein, they ſhall rectify the ſame.

143. Stat. 9 *Geo.* I. cap. 6. Sect. 1. The clauſe in 7 *Geo.* I. Stat. 2. Sect. 2. Whereby it was enacted, that two millions of the capital ſtock of the *South-Sea* company ſhould be annihilated, is repealed; and the ſaid two millions ſhall be revived, and added to the preſent capital ſtock of the company.

144. Sect. 2. The two millions by this act revived, ſhall be divided amongſt all the proprietors of the ſtock.

645. Sect. 3. The whole capital ſtock of the *South-Sea* company, computed to 33,802,483 *l.* 14 *s.* and one half-penny, ſhall be divided into two equal parts.

146. Sect. 4. One moiety of the ſame ſtock, which will by computation, amount to 16,901,241 *l.* 17 *s.* and one farthing, ſhall be converted into a joint ſtock, attended with annuities payable out of the *South-Sea* company's funds, in lieu of all dividends, *viz.* with annuities at 5 *l. per cent.* till the 24*th* of *June*, 1727, and from thence at 4 *l. per cent.* till redemption

demption by parliament; and the ſame moiety ſhall be called *The joint ſtock of the* South-Sea *annuities*; and the other moiety of the capital ſtock ſhall remain in the company, as a joint ſtock, attended with the reſidue of the yearly funds, payable at the Exchequer, till redemption; and alſo attended with the ſeveral ſums for charges of management, and with all benefits of trade. *&c.* and as concerning the moiety ſo converted into *South-Sea* annuities, every proprietor ſhall be intitled to annuities at *5 per cent.* till the *24th* of *June*, 1727, and from thence at 4 *l. per cent.* till redemption; and the *South-Sea* company ſhall receive at the Exchequer, out of the duties, *&c.* charged with their whole annuities yearly, the intereſt of the ſame moiety, till redemption, in truſt for the proprietors; and all powers, *&c.* in force, ſhall be continued for ſecuring the ſaid joint ſtock of *South-Sea* annuities, and the yearly funds to attend the ſame.

147. Sect. 5. The ſaid annuities ſhall be payable half-yearly, at *Lady-Day* and *Michaelmas*.

148. Sect. 6. If any deficiency ſhall happen in the produce of the duties, *&c.* the *South-Sea* annuities will bear one half of ſuch deficiency, till the ſame be provided for by parliament.

149. Sect. 7. The ſhares which every perſon ſhall be intitled to in the annuities, ſhall be written into new ledgers.

150. Sect. 8. The annuities ſhall be free from taxes.

151. Sect. 9. Perſons intitled to annuities, ſhall be poſſeſſed thereof as a perſonal eſtate, and the ſame ſhall not be liable to foreign attachment.

152. Sect. 10. All the principal monies in the joint ſtock of the *South-Sea* annuities, ſhall be deemed one capital or joint ſtock, on which the annuities ſhall be attending, and the ſhares therein ſhall be transferrable; and the *South-Sea* company ſhall cauſe to be kept in *London*, an office and books, in which all transfers of the ſaid annuities, ſhall be entered;

which entry ſhall be ſigned by the parties making ſuch aſſignments, or their attorneys; and the perſons to whom ſuch transfers ſhall be made, ſhall under-write their acceptance, and no other method of transfering the ſaid ſtock and annuities ſhall be good; provided that any perſon may bequeath the ſame; but ſuch legatee ſhall receive no payment, till ſo much of the will as relates to *South-Sea* annuities be entered in the office.

153. Sect. 11. No ſtamp-duties ſhall be chargeable on any transfers of the annuities.

154. Sect. 11. The *South-Sea* company ſhall enjoy in their own right, the reſidue of the ſaid annuities till redemption, and ſhall alſo have the ſums of 8000 *l. per annum*, and 137 *l.* 9 *s.* 6 *d. per annum*, and other ſums for charges of management, and ſhall alſo enjoy all profits of trade, and other privileges, *&c.* belonging to the company.

155. Sect. 13. As well the *South-Sea* company, and their general court, courts of directors, and ſub-committees, as alſo the members of the company in reſpect of the remaining moiety of the capital ſtock, and the allowances for management, *&c.* ſhall enjoy the ſame powers, *&c.* as the company might have exerciſed, if this act had not been.

156. Sect. 14. If any deficiency ſhall happen in the produce of the duties, *&c.* the company ſhall bear half of ſuch deficiency, till it be provided for by parliament.

157. Sect. 16. On repayment by parliament to the *South-Sea* company, of the whole capital ſum of 33,802,483 *l.* 14 *s.* and a half-penny *viz.* 16,901,241 *l.* 17 *s.* farthing, for the uſe of the proprietors of the *South-Sea* annuities, and the remaining 16,901,241 *l.* 17 *s.* farthing, on account of the capital ſtock to be continued to the company, in truſt for the *South-Sea* annuities, and in their own right, as alſo the yearly ſums for management, ſhall ceaſe.

158. Sect. 17. On repayment of any ſum, not leſs than 500,000 *l.* at a time, in part of the ſaid capital

pital ſtock, ſo much of the yearly funds as ſhall bear proportion to the monies ſo paid in part ſhall ceaſe.

159. Sect. 18. After redemption of the ſaid capital ſums, ſo much of the duties applicable thereto ſhall be underſtood to be redeemed by parliament.

160. Stat. 1 *Geo.* II. cap. 8. Sect. 19. Whereas the principal ſum of 500,000*l.* lottery annuities charged by 5 *Geo.* I. cap. 9, upon the duties on coals granted by 9 *Ann.* cap. 22, were by 6 *Geo.* I. cap. 4, impowered to be ſubſcribed into their *South-Sea* ſtock; and in purſuance thereof 434,605 *l.* part thereof was taken into the ſaid ſtock, and the reſidue paid off; the commiſſioners of the Treaſury are directed to pay off the ſaid 434,605 *l.* on or before the 25th of *June* 1728, out of monies to be advanced by the bank of *England* for the purchaſe of annuities, and at the ſame time to pay to the *South-Sea* company out of the ſinking fund, the farther ſum of 65,395 *l.* which will compleat a ſum of 500,000 *l.* for the redemption of a proportionable part of the annuities attending their whole principal monies, whether in capital ſtock or annuity ſtock; and 250,000 *l.* being one moiety, ſhall be applied in diſcharge of ſo much of their capital ſtock; and the remaining 250,000 *l.* ſhall be applied in diſcharge of ſo much of the joint ſtock of *South-Sea* annuities.

161. Sect. 20. The *South-Sea* company ſhall apply the ſame in equal moieties to the redemption of ſuch parts to their *South-Sea* ſtock or annuities as ſhall belong to the company in their own right, and undiſtributed among the proprietors.

162. Sect. 21. The monies ſo to be paid to the *South-Sea* company may be uſed by them in paying debts, dividends, or other ſervices of the company.

163. Stat. 3 *Geo.* II. cap. 16. Sect. 4. Whereas by rectifying a ſmall error in the computing the amount of the *South-Sea* ſtock as recited in 9 *Geo.* I. cap. 6, and by deducting half a million paid off purſuant to 1 *Geo.* II. cap. 8, the capital ſum remaining due on each of the funds of *South-Sea* ſtock and *South-*

Sea annuities doth amount to 1,665,131 *l.* 12*s.* 9*d.* farthing, and it is judged expedient that one million be applied for paying off ſo much of the *South-Sea* ſtock out of the ſurpluſſes of the ſinking fund ariſing at the feaſt of the nativity of *St. John Baptiſt* 1730, there ſhall be iſſued to the *South-Sea* company ſuch monies as ſhall be in the Exchequer, for redeeming part of the capital ſtock due to the company till the payments ſhall amount to one million; and a proportional part of the ſtock ſhall determine for the benefit of the public.

164. Sect 5. The *South-Sea* company ſhall upon the receipt of the ſaid one million diſtribute the ſame amongſt all the proprietors of their ſtock towards ſinking ſo much of their ſhares in the ſtock.

165. Sect. 7. Where any proprietors ſhall out of the ſaid one million be paid off a dividend or capital, which ſhall not amount to more than 100 *l.* the company at any time before the ſhutting of the books, are required to permit any proprietors of ſtock to transfer to ſuch proprietors any quantity of ſtock not exceeding the ſum ſo divided out of the capital, without ſtamps or other charges; and it ſhall be lawful for the company to ſell to any of their proprietors, any parcel of their ſtock as now remains in the company or in any perſons in truſt for them, as ſhall be ſufficient for the ſaid purpoſes and no more.

166. Sect. 8. Where in purſuance of this act any payments ſhall be made of the capital of any ſuch ſtock, as ſhall be veſted in perſons in truſt, *&c.* ſuch payments ſhall not be applied as dividends of profit but ſhall remain in the hands of the truſtees, till otherwiſe diſpoſed of, at intereſt; and the truſtees may lay out the ſame or any part thereof, in the purchaſe of other capital ſtocks of the ſame kind; and if ſuch truſtees by writing indorſed in, or annexed to, the receipts, and ſigned or acknowledged before one of the maſters of chancery, ſhall declare that the monies were the produce of the ſaid dividend, and the

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maſtet ſhall certify the ſame by ſubſcribing his name (for which he ſhall be paid 1 *s.*) the ſtock mentioned in ſuch receipts ſhall be liable to the ſame truſts as the reſt of the truſt-ſtock remaining in ſuch truſtees, and the truſtees ſhall be indemnified.

167. Sect. 9. Nothing in this act ſhall reſtrain any truſtees from laying out any of the truſt monies in any other purchaſes or ſecurities.

168. Stat. 3 *Geo.* II. cap. 20. Sect. 20. If at the end of any quarter, the ſeveral duties appropriated to diſcharge the annuity, or allowance for charges of management to the *South Sea* company, in reſpect of their original capital ſtock of ten millions, ſhall not be ſufficient, together with the preſent proviſions by parliament for making good any quarterly deficiencies therein to diſcharge the quarterly annuity or allowance, the ſame ſhall be made good out of the *aggregate fund* eſtabliſhed by 3 *Geo.* I. cap. 8. after prior charges.

169. Stat. 4 *Geo.* II. cap. 5. Sect. 1. Out of the ſurpluſſes called the *ſinking fund*, at the feaſt of *St. Michael*, 1731, there ſhall be iſſued to the governor and company of merchants of *Great Britain*, trading to the *South-Seas*, *&c.* towards redeeming part of the capital ſtock of annuities due to the ſaid company, until the payments amount to one million; and a proportionable part of their ſaid annuities ſhall ceaſe, *with like directions as to truſtees*, *&c.* as in 3 *Geo.* II. cap. 16.

170. Stat. 5 *Geo.* II. cap. 17. Sect. 1. Out of the *ſinking fund* at the nativity of *St. John Baptiſt* 1732, there ſhall be iſſued to the governor and company of merchants of *Great Britain* trading to the *South Seas &c.* towards redeeming part of the annuities attending on the capital ſtock of 1,000,000 *l.* ſterling; and a proportionable part of their ſtock ſhall ceaſe; *with like proviſions as in* 3 *Geo.* II. cap. 16.

171. Stat. 6 *Geo.* II. cap. 25. Sect. 2. Out of the *ſinking fund* at *Michaelmas* 1733, ſhall be iſſued to the

the *South-Sea* company for redeeming part of the *South-Sea* annuities, 1,000,000 *l.* and a proportional part of their annuities ſhall ceaſe ; *with like proviſions* as in 4 *Geo.* II. cap. 5. See parag. 169.

172. Stat. 6 *Geo.* II. cap. 28. Sect. 1. After the 24th of *June*, 1733, the capital ſtock of the *South-Sea* company, which amounts to 14,651,103*l.* 8*s.* 1*d.* and the ſhares of the reſpective proprietors, ſhall be divided into four equal parts.

173. Sect. 2. Three fourth parts of the ſaid capital ſtock which will amount to 10,988,327*l.* 11*s.* farthing, ſhall be converted to a joint ſtock attended with annuities payble out of the funds of the *South-Sea* company after the rate of 4*l. per cent* until redemption by parliament, and ſhall be called *The new joint ſtock of* South-Sea *annuities*; and the other fourth part amounting to 3,662,775*l.* 17*s.* farthing, ſhall remain in the ſaid *South-Sea* company as a trading or capital ſtock; attended with the reſidues of the annuities or funds payable at the Exchequer to the ſaid company for their whole capital, until redemption; and attended with the ſums allowed for charges of management, and with all effects, profits of trade, debts, privileges, and advantages belonging to the *South-Sea* company.

174. Sect. 3. The proprietors of the ſaid three fourth parts, ſhall have, free of all charges, certain annuities of 4*l. per cent* on the ſaid ſum of 10,988,327*l.* 11*s.* farthing, from the ſaid 24th of *June* 1733, until redemption by parliament; and the *South-Sea* company ſhall receive at the Exchequer, out of the revenues charged with their annuities, the annuity to attend the ſaid three fourth parts, ſo converted into the new joint ſtock of *South-Sea* annuities, in truſt for the annuitants.

175. Sect. 4. The proprietors of the remaining fourth of the ſaid capital ſtock ſhall have proportional ſhares of the ſaid annuities, and all benefits of trade.

176. Sect. 5. The accountant of the company ſhall twice every year at *Chriſtmas* and at *Midſummer*, or

or within one month after, ſtate an account of the company's affairs, which ſhall be laid before the next general court in order to their declaring a dividend; and all dividends ſhall be made out of the clear profit; and ſhall not exceed what the company may reaſonably divide, without incurring any farther debt; provided that the company ſhall not at any time divide more than 4*l. per. cent per annum.* until their preſent debts be paid off; and the *South-Sea* company, and their trading ſtock, ſhall be, excluſively from the ſaid new *South-Sea* annuities, liable to all debts and incumbrances of the company.

177. Sect. 6. The new *South-Sea* annuities ſhall be payable from the feaſt of *St. John* the *Baptiſt*, 1733. half yearly.

178. Sect. 7. The trading capital ſhall be charged with the payments of the new annuities, as alſo for the payment of the former joint ſtock of *South-Sea* annuities.

179. Sect. 8. Provided that the company ſhall have received the annuity payable to them at the Exchequer; and on failure of paying the ſame or within ſixty days after, then ſuch trading ſtock ſhall alſo be charged with the payment of intereſt of 5*l. per cent.*

180. Sect. 9. If any deficiency ſhall happen in the funds of the *South-Sea* company the new *South-Sea* annuities ſhall bear a proportional part of ſuch deficiency.

181. Sect. 10. The *South-Sea* company ſhall be intitled to all powers and advantages, penalties and directions, enacted by any former laws for better ſecuring the whole capital ſtock of the funds of the ſaid South-Sea company, or preventing the forging any dividend, warrant, or transfers of annuities, comprehended in the act 8 *Geo.* I. cap. 22, to be in force as to the ſaid new joint ſtock of *South-Sea* annuities. See parag. 139.

182. Sect. 11. The proportional ſhares, which every perſon ſhall have in the ſaid new *South-Sea* annuities

nuities, ſhall be written off from the books of the company into books for that purpoſe.

183. Sect. 12. The new *South-Sea* annuities ſhall be free from taxes.

184. Sect. 13. The ſaid new annuities ſhall be perſonal eſtate and not liable to foreign attachment.

185. Sect. 14. The principal monies in the ſaid new joint ſtock, of *South-Sea* annuities ſhall be a joint ſtock, and any ſhare therein ſhall be transferrable and the *South-Sea* company ſhall cauſe to be kept within the city of *London* an office and books, in which all transfers of the new annuities ſhall be entered and ſigned by the party making ſuch transfers, or his attorney; and the perſon to whom ſuch transfer ſhall be made, or his attorney, ſhall underwrite his acceptance; and no other method of transferring the annuities ſhall be good in law.

186. Sect. 15. Any perſon poſſeſſed of ſuch new annuities may bequeath the ſame in the ſame manner as any other perſonal eſtate.

187. Sect. 16. No ſtamp duties ſhall be chargeable upon the transfers of the new annuities.

188. Sect. 17. The *South-Sea* company may exerciſe all ſuch powers and enjoy the ſame immunities, benefits of trade, and advantages as if this act had not been made.

189. Sect. 19. No perſon ſhall be qualified for being governor (his Majeſty excepted) unleſs ſuch governor ſhall have in his own name and right 5,000*l.* in the trading ſtock, nor ſhall any perſon be qualified to be ſub-governor who ſhall not have 4,000*l.* nor ſhall any perſon be qualified to be deputy governor unleſs ſuch deputy governor ſhall have 3,000*l.* and no perſon ſhall be qualified for a director who ſhall not have 2,000*l.* in the trading ſtock.

190. Sect. 21. In every general court of the company, every member, who ſhall have in his own name and right 500*l.* trading ſtock ſhall have one vote, and every member who ſhall have 2,000*l.* ſhall have two votes, and every member who ſhall have 3,000*l.*

3,000 *l.* ſhall have three votes, and every member who ſhall have 5,000 *l.* ſhall have four votes.

191. Sect. 23. Where ſuch diviſion ſhall be made of any ſtock which ſhall be veſted in any perſons in truſt, the parcels of the ſaid new *South-Sea* annuities and of the ſaid trading ſtock, ſhall be liable to the ſame truſts.

192. Sect. 24. It ſhall be lawful for ſuch truſtees to ſell ſuch remaining trading ſtock and within eight days, to inveſt the money ariſing therefrom in the purchaſe of the new *South-Sea* annuities; and receipts ſhall be given by the perſons transferring; and in caſe ſuch truſtees, by writing indorſed on ſuch receipts, and ſigned before one of the maſters of chancery, ſhall declare that the monies in the receipts were the produce of the ſaid truſt ſtock, the annuity ſtock mentioned in ſuch receipts ſhall be ſubject to the ſame truſts.

193. Sect. 25. The fund of the trading ſtock ſhall not, without the conſent of the company, be liable to be redeemed by parliament, until the new *South-Sea* annuities ſhall have been reduced by redemption by parliament to the ſum of 3,500,000 *l.*

194. Sect. 26. The court of directors ſhall cauſe all the bonds owing by the company to be regiſtered; and no new bonds ſhall be iſſued nor any bonds paid off, except the proprietors ſhall, in a general court, be firſt acquainted with the uſes for which the bonds are intended to be iſſued; and within fourteen days, and twenty-one days from the time of holding the ſaid general court, one other general court ſhall be aſſembled to take the reſolutions of the proprietors, whether any new bonds ſhall be iſſued or not; provided that it may be lawful for the court of directors to affix the ſeal of the company to new bonds made out in lieu of bonds filled by indorſements, or worn out or loſt; and no calls ſhall be made, except the ſame notice ſhall be given in a general court, and the reſolutions of the proprietors taken in another general court.

195. Sect. 27, 28. *South-Sea* annuities may be bequeathed, as any other perſonal eſtate.

196. Sect. 29. This act ſhall be a public act.

197. Stat. 7 *Geo.* II. cap. 17, Sect. 1. It ſhall be lawful for the *South-Sea* company to pay off the company's bonds, as they might have done in caſe the act 6 *Geo.* II. cap. 28, had not been made.

198. Sect, 2. The intent of the ſaid act was, that no new bonds, or bonds bought up with the company's money, ſhould be iſſued, but by the conſent of the general court.

199. Sect. 3. This act ſhall be a public act.

200. Stat. 9 *Geo.* II. cap. 34, Sect. 12. Out of the ſinking fund at *Chriſtmas* 1736, there ſhall be iſſued to the *South-Sea* company, for redeeming part of the *new South-Sea annuities* 1,000,000 *l. with the uſual proviſions for annihilation as in Stat.* 4 Geo. II. *cap.* 5.

201. Stat. 10 *Geo.* II. cap. 17. Sect. 35. Out of the ſurplus granted by parliament, there ſhall be iſſued to the governor and company of the merchants of *Great Britain* trading to the *South-Seas*, *&c.* at the feaſt of *St. Michael*, 1737, ſums not exceeding one million, for redeeming part of the *Old South-Sea annuities with the uſual proviſions*, *as before.*

202. Stat. 24 *Geo.* II. cap. 11. Sect. 1. Whereas the corporation of the governor and company of merchants of *Great Britain* trading to the *South-Seas*, and other parts of *America*, and for encouraging the fiſhery, have propoſed to accept of 4 *l. per centum per annum*, on their capital ſtock, to *Chriſtmas*, 1757, and then to ſtand reduced to 3 *l. per centum per annum*, provided the receipt from the Exchequer, and charges of management upon the preſent old and new *South-Sea* annuities, be continued as they now are; and alſo the charges of management on the capital ſtock of the ſaid company be continued; and that all the rights and exemptions, with regard to the redemption of the ſame, be confirmed in the ſame manner as they now ſtand. And the houſe of

commons

commons having duly conſidered the ſaid propoſal have reſolved to accept thereof, in full diſcharge of all demands which the ſaid company could or might claim of the king of *Spain*, on account of the aſſiento, or annual ſhip, or any account whatſoever, over and above the ſum of 100,000 *l.* paid purſuant to treaty: therefore, *&c.* be it enacted, *&c.* that the ſaid governor and company of merchants of *Great Britain* trading to the *South-Seas*, and other parts of *America*, and for encouraging the fiſhery, ſhall have, receive and enjoy, *&c.* the preſent annuity of 4 *l.* *per centum per annum*, payable on the ſaid capital ſtock, until the 25th of *December*, 1757: and that from after the ſaid 25th day of *December*, 1757, the ſaid annuity of 4 *l. per cent per annum* ſhall be reduced to an intereſt after the rate of 3 *l. per centum per annum*, until the redemption thereof, in full diſcharge of all demands which the ſaid company could or might claim of the king of *Spain*, on account of the aſſiento, or annual ſhip, or on any account whatſoever, over and above the ſum of 100,000 *l.* paid purſuant to treaty.

203. Sect. 2. Provided, that the ſaid governor and company ſhall continue to receive from the receipt of his Majeſty's Exchequer, ſo much monies out of the funds appropriated for that purpoſe, as ſhall from time to time, become due and payable for the intereſt of, and charges of management upon ſuch part of the ſaid old and new *South-Sea* annuities as are not redeemed, and on the capital ſtock of the ſaid company, as they now have and receive; and that all the rights and exemptions, with regard to the redemption of the ſaid capital ſtock of the ſaid company, ſhall be, and are hereby, confirmed in the ſame manner as they now ſtand.

204. Sect. 3. If any officer or ſervant of the ſaid company, being intruſted with any note, bill, dividend-warrant, bond, deed, or any ſecurity, money or other effects belonging to the ſaid company, or having

having any bill, dividend-warrant, bond, deed, or any ſecurity, money or effects, of any other perſon or perſons, lodged or depoſited with the ſaid company, or with him as an officer or ſervant of the ſaid company, ſhall ſecrete, embezzle, or run away with, any ſuch note, bill, dividend-warrant, bond, deed, ſecurity, money or effects, or any part of them, every officer and ſervant ſo offending, and being thereof convicted in due form of law, ſhall be deemed guilty of felony, and ſhall ſuffer death as a felon, without benefit of clergy.

205. Stat. 25 *Geo.* II. cap. 27. Sect. 26. From and after the 5th of *April*, 1758, the joint ſtock of the firſt ſubſcribed *Old South-Sea* annuities, with as much of the joint ſtock of the ſecond ſubſcribed *Old South Sea* annuities, as ſhall be then unſatisfied, ſhall be made one joint ſtock of *Old South-Sea* annuities,

206. Sect. 27. From and after the 5th of *January*, 1758, the joint ſtock of the firſt ſubſcribed *New South-Sea* annuities, with ſo much of the joint ſtock of the ſecond ſubſcribed *New South-Sea* annuities, as ſhall be then unſatisfied, ſhall be made into one new joint ſtock of *South-Sea* annuities.

270. Stat. 26 *Geo.* II. cap. 16. Sect. 1. Whereas, in and by the charter of incorporation, granted in purſuance of an act of the 9th year of her late Majeſty queen *Anne*, to the governor and company of merchants of *Great Britain*, trading to the *South-Sea*, and other parts of *America*, and for encouraging the fiſhery, bearing date the 8th of *September*. 1711, it is amongſt other things directed, that for the good government of the ſaid company, there ſhould be for ever a court of directors, to conſiſt of one governor, one ſub-governor, and one deputy-governor, and thirty directors, and that the majority of the ſaid court of directors, whereof the governor, ſub-governor, or deputy-governor (except as in the ſaid charter is excepted) to be always one, ſhould be deemed a court of directors; and that from and after the election, by the ſaid charter directed to be made between the

the 25th of *December*, and the 6th of *February*, 1717; of and for ſuch governors and directors, ſuch election ſhould from thenceforth be made every 3d year, between the 25th of *December*, and the 6th of *February*, for ever: And whereas the ſaid company at a general court holden on the 1ſt day of *February*, 1753, came to a reſolution that proper application ſhould be made to parliament, in the name of the ſaid company, that from and after the expiration of the 3 years, for which the preſent governors and directors are choſen, the court of directors of the ſaid company might conſiſt of one governor, one ſub-governor, one deputy-governor, and 18 directors only, and that the majority of ſuch court of directors, whereof the governor, ſub-governor, or deputy-governor (except as in the ſaid company's charter is excepted) to be always one, might from thenceforth be deemed a court of directors; and that from thenceforth alſo the election of governors and directors might be annually, between the 12th *December*, and the 6th of *February*; and that the firſt election of governors, and 18 directors might be between the 25th day of *December*, 1753, and the 6th of *February*, then next following: And whereas the ſaid governor and company, by their petition under their common ſeal, have prayed that they may be enabled, by authority of parliament, to carry the aforeſaid reſolution of their general court into execution; may it therefore, *&c.* be it enacted, *&c.* that from and after the expiration of the 3 years for which the preſent governor and directors are choſen, the court of directors of the ſaid company, do and ſhall conſiſt of one governor, one ſub-governor, one deputy-governor, and twenty-one directors only; and that the majority of ſuch court of directors, whereof the governor, ſub-governor, or deputy-governor (except as in the charter of the ſaid company is excepted) to be always one, ſhall from thenceforth be deemed and be a court of directors.

208. Sect. 2. Provided, that at the next general election of directors, 21 directors and no more,

who were at the laſt preceding general election of directors choſen into the office of directors, may be again appointed or choſen into the office of directors; and that at and in every ſubſequent election, no more than 15, who were at the laſt preceding general election of directors choſen into the office of directors, ſhall be again appointed or choſen into the office of directors.

209. Sect. 3. Provided that the ſalaries of the governors and directors of the ſaid governor and company, ſhall continue and be the ſame as they now are.

Bank

Bank of England.

1*. STAT. 5 and 6 Will. and Mar. cap. 20. ſect. 17. Every year, beginning from the 1ſt of *June*, 1694, the ſum of 140,000*l.* out of monies to ariſe by duties of tonnage *(ſince expired)* and by an exciſe upon beer, *&c.* hereby granted, *(being a moiety of the rates granted* by 2 Will. and Mar. ſtat. 2. cap. 10) ſhall be a yearly fund for the annuities in the act mentioned, and for the purpoſes hereafter expreſſed, and any deficiencies to be ſupplied out of the appropriated revenues.

2. Sect. 18. For raiſing 1,200,000*l.* part of 1,500,000*l.* granted by the act, the yearly ſum of 140,000*l.* ſhall be kept apart in the receipt of Exchequer, and paid as in the act is directed.

3. Sect. 19. Their majeſties, by commiſſion under the great ſeal, may appoint perſons to take ſubſcriptions on or before the firſt day of *Auguſt*, 1694, by ány perſons, natives, or foreigners, *&c.* for raiſing and paying into the receipt of the Exchequer 1,200,000*l.* part of the ſum of 1,500,000*l.* and the yearly ſum of 100,000*l.* part of the ſaid yearly ſum of 140,000*l.* ſhall be applied to the uſe of ſuch perſons as ſhall make ſuch ſubſcriptions and payments, in the proportion hereafter mentioned: *viz.* each weekly payment ſhall, by the auditor of the receipts, be divided into five ſeventh parts and two ſeventh

* This act is intitled, An act for granting to their majeſties ſeveral rates and duties upon tonnage of ſhips and veſſels, and upon beer, ale, and other liquors, for ſecuring certain recompences and advantages in the ſaid act mentioned to ſuch perſons as ſhall voluntarily advance the ſum of 1,500,000*l.* towards carrying on the war againſt *France*,

parts, which five ſeventh parts are appropriated towards the payment of the ſaid yearly ſum of 100,000*l.* and ſhall be paid to the contributors towards raiſing the ſum of 1,200,000*l.*.

4. Sect. 20. Their majeſties, by letters patent, may appoint in what manner the ſaid ſum of 1,200,000*l.* and the ſaid yearly ſum of 100,000*l.* or any part thereof, may be transferred to ſuch perſons as ſhall accept of the ſame, and incorporate ſuch ſubſcribers to be one body corporate, by the name of *The governor and company of the Bank of* England; and they ſhall be capable to purchaſe and retain lands, *&c.*

5. Sect. 22. The commiſſioners of the Treaſury, *&c.* are required, without farther warrant, to direct their warrants yearly for the payment of the ſaid 100,000*l.* to the contributors of the ſaid 1,200,000*l.* and the auditor of receipt of Exchequer, and all other officers of the Exchequer, are enjoined to iſſue the ſaid monies without fee, and under the penalties inflicted upon any officers for diverting any money appropriated by this act.

6. Sect. 23. Provided that none ſhall ſubſcribe more than 20,000*l.* and that every ſubſcriber ſhall pay one fourth part at the time of ſubſcribing: and if the reſidue be not paid before *January*, the former ſubſcription to be forfeited.

7. Sect. 24. No more than 10,000*l.* ſhall be ſubſcribed before the firſt of *July*.

8. Sect. 25. Not to be a corporation, except a moiety be advanced before the firſt of *Auguſt*. Subſcribers may transfer, if moiety be not advanced.

9. Sect. 26. The corporation ſo to be made ſhall not borrow under their common ſeal any farther ſum than 1,200,000*l.* ſo that they ſhall not, at any one time, owe more, unleſs by act of parliament, upon funds agreed in parliament; and if any more ſhall be borrowed under the common ſeal, every member of the ſaid corporation ſhall, in their private capacities, be liable, in proportion to their ſeveral ſhares, to the repayment of ſuch monies, with intereſt; and

in

in ſuch caſe an action of debt may be maintained in any of the courts of record at *Weſtminſter*, by the creditors, to whom any ſuch ſecurity, under the common ſeal of the corporation, ſhall be made, againſt all or any members of the corporation, in proportion to their ſhares, wherein judgment may be recovered, as if ſecurity were given in their private capacities; any agreement to the contrary notwithſtanding.

10. Sect. 27. The corporation ſhall not trade, or ſuffer any perſon in truſt for them to trade, with any of the effects of the corporation, in the buying or ſelling of any merchandize or goods; and every perſon ſo trading, or by whoſe order ſuch trading ſhall be made, ſhall forfeit treble the value of the goods and merchandize traded for, to ſuch perſon as will ſue for the ſame in the Courts of Record at *Weſtminſter*.

11. Sect. 28. But the corporation may deal in bills of exchange, and in buying or ſelling bullion, gold or ſilver, or in ſelling goods mortgaged to them, and not redeemed within three months after the time, or ſuch goods as ſhall be the produce of lands purchaſed by the corporation.

12. Sect. 29. All bills obligatory and of credit, under the ſeal of the corporation, may, by indorſement thereon under the hand of the proprietor, be aſſigned, and the aſſignee may ſue in his own name.

13. Sect. 30. If the governor, or other members, of the corporation to be eſtabliſhed, ſhall, upon account of the corporation, purchaſe any lands or revenues belonging to the crown, or lend to their majeſties, their heirs, or ſucceſſors, any money by way of anticipation on any part of the revenue, other than ſuch part only on which a credit of loan ſhall be granted by parliament; then the ſaid governor, or members, ſo conſenting to lend, being thereof lawfully convicted, ſhall forfeit treble the value of ſuch ſum ſo lent, whereof one fifth part ſhall be to the informer, to be recovered in any court of record at *Weſt-*

minſter, and the reſidue to be diſpoſed of by parliament.

14. Sect. 31. Amerciaments, fines, and iſſues againſt the ſaid corporation, upon account of any ſuits to be brought againſt them, ſhall not be pardoned: and if ſuch be eſtreated into the Exchequer, the officers of the Exchequer, who are to pay the yearly ſum of 100,000*l.* may, out of that, retain ſo much as the ſaid amerciaments, fines, or iſſues amount unto.

15. Sect. 32. If any perſon ſhall obtain a judgment againſt the corporation, and ſhall bring execution thereupon unto the officers of the Exchequer, then the ſaid officers are required to pay the ſum in the execution, to the plaintiffs or their aſſigns: and the ſaid officers may detain ſo much of the yearly ſum of 100,000*l.* as the debt ſhall amount unto.

16. Sect. 33. Any member of the Houſe of Commons may be a member of this corporation, notwithſtanding ſtat. 5 and 6 Will. and Mar. cap. 7.

17. Stat. 8 and 9 Will. III. cap. 20. ſect 20. The preſent ſtock of the Bank of *England* ſhall be enlarged by new ſubſcriptions.

18. Sect. 21. Before ſuch enlargement, the ſtock ſhall be computed by ſeven of the preſent members and ſeven of the new ſubſcribers; and, if the clear ſtock amount not to 1,200,000*l.* the old members to make it up in tallies, orders, bank-bills, or notes; but, if it exceed 1,200,000*l.* then the ſurplus to be divided among the old members.

19. Sect. 22. Seven commiſſioners appointed by his majeſty for that purpoſe, ſhall take ſuch new ſubſcriptions before the 24th of *June*, 1697.

20. Sect. 23. Four fifths of each ſubſcription ſhall be, at the time of ſubſcribing, anſwered by tallies and orders upon the firſt, third, or fourth aids of 4*s.* *per* pound; the quarterly poll; three fourths of the cuſtoms; the ſalt-act; two thirds of the additional exciſe; the additional impoſitions; the ſtamp act; the 300,000*l.* *per annum* on tonnage and poundage; the

the duties on marriages, births, and burials, &c. on wines, vinegar, and tobacco, &c. and joint ſtocks, &c. on low wine,, &c. on the 6000*l. per* week out of the exciſe, or the 6000*l. per* week out of the Poſt-office; and the other fifth part in bank-bills or notes.

21. Sect. 24. After the 24th of *June*, 1697, intereſt of eight *per cent. per an.* ſhall be allowed for the tallies and orders ſo ſubſcribed, out of the funds granted by this act; *viz. The tonnage and poundage, the duties on wine and vinegar granted by* ſtat. 1 Jac. II. cap. 3; *the duties on tobacco and ſugar*, by 1 Jac. II. cap. 4; *the additional impoſitions on goods and merchandize by* 2 Wil. and Mar. ſtat. 2. cap. 4. and 4 and 5 Wil. and Mar. cap. 5; *the ſtamp act*, 5 and 6 Will. and Mar. cap. 21; *and the duties on houſes by* 7 and 8 Wil. III. cap. 18.

22. Sect. 25. The intereſt payable to the Bank upon ſo many tallies, or orders, as the Bank is already poſſeſſed of, whereof the principal ſhall be equal to the ſaid fifth part ſubſcribed, in bank-bills or notes, ſhall be likewiſe augmented to eight *per cent.*

23. Sect. 26. The new ſubſcribers ſhall, after the ſaid 24th of *June*, be members of, and united to, the Bank of *England.*

24. Sect. 28. During the continuance of this Bank, no other bank, or fellowſhip in nature of a bank, ſhall be erected or permitted by act of parliament.

25. Sect. 29. The intereſt due on tallies and orders ſubſcribed into the Bank, ſhall be accepted as ſo much principal money.

26. Sect. 30. The Bank may borrow by bills (over and above the 1,200,000*l.* to which they were at firſt limited) any ſum, not exceeding the ſum ſubſcribed, under an obligation of paying the ſaid bills in money upon demand; and, in default thereof, on demand made at the Bank between nine and twelve in the forenoon, and the default proved by affidavit in writing before one of the barons of the

Exchequer, the ſaid bills to be paid at the Exchequer out of the firſt money due unto the Bank, other than the fund of 100,000 *l. per annum*. But theſe bills ſhall be diſtinguiſhed from the debts contained within the ſaid 1,200,000 *l.* and expreſſed to be made by virtue of this act.

27. Sect. 31. The capital ſtock and fund of the ſaid Bank ſhall be exempt from taxes.

28. Sect. 32. After compleating of the ſaid ſubſcriptions, the intereſt of all tallies and orders ſubſcribed, together with 100,000 *l. per annum*, ſhall be applied to the uſe of the members of the Bank, proportionably to each members ſhare therein.

29. Sect. 33. The ſtock of the Bank ſhall be accounted a perſonal, and not a real eſtate, and ſhall go to executors, and not to heirs.

30. Sect. 34. No contract or agreement, either by word or in writing, for buying or ſelling of bank-ſtock, ſhall be good in law or equity, unleſs it be regiſtered in the books of the Bank within ſeven days, and the ſtock tranſferred within fourteen days.

31. Sect. 35. No act of the Bank ſhall forfeit the ſtock thereof, but the ſame ſhall be ſubject to their debts.

32. Sect. 36. It ſhall be felony, without benefit of clergy, to forge, or counterfeit, the common ſeal of the Bank, or any ſealed bank-bill, or any bank-note, or to alter or eraze ſuch bills or notes.

33. Sect. 27. The officers of the Exchequer ſhall keep account of all monies appropriated to the Bank, either upon the fund of 100,000 *l. per annum*, or any other parliamentary funds, or for tallies belonging to the Bank; and ſhall duly direct, record, and make payment thereof, under the penalty of loſs of place, incapacity, and double damages.

34. Sect. 38. The monies ariſing by the continuation of the ſubſidy of tonnage and poundage, *&c.* of wines, vinegar, and tobacco, *&c.* by the additional impoſitions on goods and merchandizes; by ſtamped vellum, *&c.* by marriages, *&c.* and by the duties

duties on houſes, from the times that the ſaid duties are ſeverally continued, as aforeſaid, till the firſt of *Auguſt*, 1706: and by the ſurplus of duties on wine, vinegar, and tobacco, *&c.* over and above the 1,500,000 *l.* credit given thereupon, and the intereſt thereof ariſing by the act 7 and 8 *Will.* III. cap. 10, continued till the 29th of *September*, 1701; and alſo on houſes (after the repayment of 7382 *l.* 11 *s.* 4 *d.* borrowed thereon, by 7 and 8 *Will.* III. cap. 18, and the intereſt thereof; and of all the bills ſigned at the Mint for the ſixpence *per* ounce upon plate brought in between the 4th of *May*, 1696, and the 4th of *November*, 1696) granted for ſeven years from the 25th of *March*, 1696, and upon ſalt, *&c.* after the repayment of 1,724,000 *l.* borrowed thereon, and the intereſt thereof) ariſing by the act 7 and 8 *Will.* III. cap. 31. ſhall be the general fund for making good the particular funds in this act expreſſed, and ſhall be applied accordingly.

35. Sect. 41. The monies ariſing by the ſaid general fund after the 28th of *June*, 1698, as well by the ſaid duties on houſes and additional impoſitions, as for the ſaid duties on vellum, *&c.* continued from the 28th of *June*, 1698, to the 1ſt of *Auguſt*, 1706; and for tonnage and poundage, *&c.* continued from the 25th of *December*, 1699, to the 1ſt of *Auguſt*, 1706; and for marriages, *&c.* and for wines, vinegar, tobacco, *&c.* continued from the 28th of *September*, 1701, to the 1ſt of *Auguſt*, 1706; and by the ſaid ſurplus on wines, vinegar, and tobacco, *&c.* and on ſalt, *&c.* ſhall be applied towards principal and intereſt of the ſaid firſt, third, and fourth aids of 4 *s.* *per* pound; the quarterly poll; the three fourths of the cuſtoms; the duties on ſalt, *&c.* the two thirds of the additional exciſe; the additional impoſitions; the duties on vellum, *etc.* on marriages, *etc.* on wines, vinegar, and tobacco, *&c.* and the 300,000 *l.* *per annum* out of tonnage and poundage, in proportion to the reſpective deficiences, as computed in this act: and every twenty-eight days an account

account ſhall be made up at the Treaſury of all monies brought in, applicable to the ſaid deficient funds, which ſhall be applied proportionably, as well to the Bank of *England*, as other perſons entitled to principal and intereſt thereon.

36. Sect. 43. Out of the ſaid general fund the intereſt due to the Bank ſhall be made up 8 *l. per cent.*

37. Sect. 44. Where any revenue is already appropriated by parliament for repayments in courſe, the ſame ſhall be paid accordingly; but the new funds in this act ſhall be applied as hereby preſcribed.

38. Sect. 45. In caſe of judgment of forfeiture given againſt the Bank, the yearly payments out of the Exchequer, and all the eſtate belonging to the Bank, ſhall be veſted for three years in twenty-four perſons, to be choſen by the Bank, who ſhall have power to receive the monies due to the Bank, as if no ſuch judgment had been given, and to pay and diſcharge the debts and contracts due at the time of ſuch judgment; after which the ſurplus ſhall be divided among the ſeveral members: and then the ſaid yearly payments ſhall be veſted in the particular members, in proportion to a liſt thereof to be made by the ſaid truſtees; and ſhall be aſſignable in a book to be kept by the auditor of the receipt.

39. Sect. 46. The Bank may employ a clerk to copy the docquets of any extents, judgments, *&c.* in any the offices of record at *Weſtminſtir*, paying as for a ſearch only.

40. Sect. 37. No member of the Bank ſhall be adjudged a bankrupt, by reaſon of his ſtock in the Bank, nor ſhall the ſtock be ſubject to foreign attachment.

41. Sect. 48. The monies received out of the Exchequer for the Bank ſhall be divided among the members proportionably for their particular uſe.

42. Sect. 49. The debts of the Bank ſhall never exceed their capital ſtock, under penalty of ſubject-

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ing the ſeveral members ſo far as their dividends received will extend, to ſatisfy the debts to any perſons who may recover the ſame with treble coſts.

43. Sect. 50. If the ſaid funds for intereſt ſhall appear inſufficient, they ſhall be made up of ſuch aids, *&c.* as ſhall be granted the then next ſeſſion of parliament; and, if upon the 1ſt of *Auguſt*, 1706, or within three months after, the produce of the ſeveral aids, *&c.* ſhall not be ſufficient to diſcharge the principal and intereſt intended to be diſcharged by this act, the ſame ſhall be ſupplied out of ſuch aids, *&c.* as ſhall be granted the next ſeſſion of parliament.

44. Sect. 52. In all future elections not above two thirds of the directors of the preceding year ſhall be choſen.

45. Stat. 9 and 10 *Will.* III. cap. 3. ſect. 4. The Bank of *England* ſhall make dividends of the monies, which ſhall be received by them by virtue of the tallies and orders, which have been ſubſcribed into their ſtock purſuant to the above act 8 and 9 *Will.* III. cap. 20. once in every ſix calendary months at leaſt.

46. Stat. 12 and 13 *Will.* III. cap. 12. ſect. 14. The governor and company of the Bank of *England*, until they ſhall be repaid all monies which they ſhall lend upon this act, for or in part of 420,000*l.* being the laſt part of 820,000*l.*, authorized to be borrowed upon the weekly payment of 3,700*l.* out of certain branches of exciſe, with intereſt for ſuch 420,000*l.* after the rate of 7*l. per cent.* ſhall not be obliged to make dividends of the monies to be received by them, by virtue of any tallies or orders ſubſcribed into their ſtock in purſuance of the above act 8 and 9 *Will.* III. cap. 20; but at ſuch times only as ſhall be ordered by a general court.

47. Stat. 6 *Ann.* cap. 22. ſect. 9. During the continuance of the Bank of *England*, it ſhall not be lawful for any other body corporate, or for other perſons united in partnerſhip, exceeding the number of ſix,

ſix, in *England*, to borrow money on bills or notes payable on demand, or at leſs than ſix months. *This clauſe is repeated in* ſtat. 7 *Ann.* cap. 7. ſect. 61, *and* ſtat. 3 *Geo.* I. cap. 8. ſect. 44.

48. Stat. 7 *Ann.* cap. 7. ſect. 1. Reciting, that by an act, 5 *Will.* III. *Mary*, cap. 20, the bank of *England* was erected, and 1,200,000 *l.* was lent to their Majeſties, for which there is payable to the governor and company, the yearly ſum of 100,000 *l.* out of the duties of exciſe, redeemable by parliament; reciting another act made 8 and 9 *Will.* III. cap. 20, *for making good the deficiencies of ſeveral funds, and for enlarging the capital ſtock of the Bank*; and an other act, made 5 *Ann.* cap. 13, *for continuing the duties on houſes, to ſecure a yearly fund for circulating Exchequer-bills (now expired)* reciting alſo, that the governor and company did lately admit new ſubſcriptions for doubling their ſtock of 2,201,171 *l.* 10 *s.* at the rate of 115 *l.* to be paid for every 100 *l.* ſubſcribed; and that ſubſcriptions have been made for that ſum. It is enacted, that 2,201,171 *l.* 10 *s.* be added to the ſtock of the Bank, which before ſuch addition, conſiſted only in the like ſum; ſo that the whole capital ſtock now, ſhall amount to 4,402,343 *l.* and the new ſubſcribers ſhall be incorporated with the preſent members of the Bank; and be taken to be one body politic and corporate, by the name of *The governor and company of the Bank of* England.

49. Sect. 2. The ſaid capital ſtock ſhall be aſſignable in the ſame manner as the original capital ſtock.

50. Sect. 3. The Bank is to pay into the Exchequer, 400,000 *l.* before the twenty-fifth of *Auguſt*, 1709.

51. Sect. 5. The Bank of *England* thus enlarged, ſhall for ever be a body corporate, and enjoy the yearly fund of 100,000 *l.* out of the exciſe.

52. Sect. 62. The ſtock and funds of the Bank, and the intereſt of every member therein ſhall be exempted from taxes, and ſhall be deemed a perſonal eſtate,

eſtate, and ſhall go to executors and not to heirs, and ſhall not be liable to foreign attachment.

53. Sect. 63. The original fund of 100,000 *l.* *per annum*, and all profit of the management of the corporation, ſhall be applied to the uſe of the members of the corporation ratably.

54. Sect. 65. It ſhall be lawful for the Bank at any time to reduce their capital ſtock, increaſed as aforeſaid, by dividends; taking care that the total of their debts do not exceed the value of their capital; and in caſe the governor and company by any dividend ſhall reduce their capital, without proportionably reducing the total of the debts, ſo that the value of their capital ſhall not be ſufficient to anſwer their debts; in ſuch caſe the particular members who ſhall receive ſuch dividend, ſhall be ſeverally liable, ſo far as the ſhares by them received, will extend to pay the debts which ſhall remain due to any perſons, who may ſue for the ſame (beſides treble coſts) by action of debt, or upon the caſe, *&c.*

55. Sect. 72. It ſhall be lawful for the ſaid governor and company to call in any ſums of money, which they in a general court ſhall think neceſſary, to be paid by their members proportionably, which ſhall have before been divided out of the ſaid capital of 4,402,343 *l.* and in caſe any member ſhall neglect to pay his ſhare at the times appointed, by notice in the *London* Gazettee, and fixed upon the Royal Exchange, it ſhall be lawful for the governor and company to ſtop the dividends of ſuch member, and alſo to ſtop the transfers of their ſhares, and to charge the defaulters with intereſt, at ſix *per cent*, and in caſe the principal and intereſt be not paid in three months, they ſhall have power to ſell the ſtock of ſuch defaulters, to pay the ſame.

56. Stat. 9 *Ann.* cap. 7. ſect. 11. Every perſon who ſhall be elected governor, deputy-governor, or director of the Bank of *England* ſhall, during that year, be incapable of being choſen a director for management of the affairs of *The united company of merchants*

chants of England, *trading to the* Eaſt-Indies, and *vice verſa*.

57. Stat. 12 *Ann.* ſtat. 1. cap. 11, ſect. 23. The Bank ſhall continue a body corporate, and enjoy their yearly fund of 100.000 *l.* ſubject to the following power of redemption.

58. Sect. 24. Upon twelve months notice after the 1ſt of *Auguſt*, 1742, upon repayment by parliament to the Bank, of 1,600,000 *l.* and all arrears of the ſaid 100,000 *l. per annum*, and of all money owing to them upon tallies, Exchequer-orders, or parliamentary funds (ſuch funds for redemption, whereof other proviſion is made excepted) the ſaid yearly ſum of 100,000 *l.* ſhall ceaſe.

59. Sect. 25. After ſuch redemption, the corporation ſhall ceaſe.

60. Sect. 26. This ſhall be a public act.

61. Stat. 12 *Ann.* Stat. 2. cap. 3. ſect. 10. It ſhall be lawful, as well for the Bank as for any others, to lend money to the treaſurers of the Navy, *&c.* upon *South-Sea* ſtock, *purſuant* to *Stat.* 10 *Ann. cap.* 19. *ſect.* 185.

62. Stat. 3 *Geo.* I. cap. 8. ſect. 1. The governor and company of the Bank of *England* being willing to deliver up to be cancelled, as many Exchequer-bills as amount to 2,000,000 *l.* in principal money, and to accept an annuity of 100,000 *l.* being five *per cent.* for the ſame, to commence from *Chriſtmas*, 1717, redeemable upon one years notice.

63. Sect. 5. The Bank ſhall, before *Chriſtmas*, 1717, deliver up as many Exchequer-bills, as ſhall amount to 2,000,000 *l.* in principal money, to be cancelled.

64, Sect. 6. After *Chriſtmas*, 1717, the Bank ſhall for ever have one annuity of 100,000 *l.* (being 5 *l. per cent.* computed on the ſaid ſum of 2,000,000 *l.*) which yearly ſum ſhall be paid out of the aggregate fund and duties on houſes, and ſhall be paid to the Bank for ever, at the four uſual feaſts.

65. Sect.

65. Sect. 7. Upon one years notice to be given at *Chriſtmas*, 1717, or at any quarterly feaſt after, and upon repayment to the Bank, of the 2,000,000 *l.* and of all arrears of the ſaid yearly ſum of 100,000 *l.* the ſaid yearly ſum ſhall ceaſe.

66. Sect. 13. For the better payment of the annuity of 100,000 *l.* ſtanding orders ſhall be ſigned by the Treaſury.

67. Sect. 14. As the ſeveral duties chargeable with the payment of the ſaid annuity, ſhall be brought into the Exchequer, ſuch monies ſhall be iſſued upon ſuch orders, weekly or otherwiſe, towards diſcharging the ſeveral annuities thereon charged, to grow due at the end of the quarter of a year, ſo as ſuch weekly payments exceed not the ſums of the ſeveral quarterly payments which ſhall grow due at the end of each quarter.

68. Sect. 16. The ſaid annuity of 100,000 *l.* ſhall be deemed perſonal eſtate; and the ſame, and the ſtocks which the Bank now have, and thoſe they ſhall be entitled unto by virtue of this act, and the ſums payable to them in reſpect of any ſuch ſtock, ſhall be free from all taxes, and not liable to foreign attachment.

69. Sect. 17. The ſaid duties on houſes and aggregate fund, and other duties, ſhall be continued to his Majeſty, his heirs and ſucceſſors, for ever, and ſhall be raiſed, *&c.* by ſuch methods, *&c.* as are preſcribed by the reſpective acts now in force.

70. Sect. 18. The monies of the ſaid duties, *&c.* which ſhall be brought into the Exchequer for the purpoſes in this act (except the charges for raiſing, *&c.* the ſame) are appropriated for diſcharging the growing payments on the ſaid annuity of 100,000 *l.* which payments are to be ſatisfied without charge, but ſubject to redemption. And in caſe any officer of the Exchequer ſhall miſapply any of the monies, or ſhall not keep books, and do all other things by this act required, he ſhall forfeit his office, and be incapable to ſerve his Majeſty in any employment of

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truſt or profit, and be liable to pay double the ſum miſapplied, with coſts to the party grived, to be recovered in any of the courts at *Weſtminſter*.

71. Sect. 22. The annual ſum of 100,000 *l.* ſhall be preferred in payment before the yearly ſum of 120,000 *l.* to the civil liſt.

72. Sect. 23. After ſatisfying the payments aforeſaid, the deficiencies on the original fund of 100,000 *l.* *per annum*, payable to the Bank, out of five ſeventh parts of certain duties of excife (ſee par. 3.) ſhall be ſatisfied out of the monies by this act appropriated; after which the yearly ſum of 4000 *l.* ſhall be iſſued to the ſheriffs.

73. Sect. 24. The ſurplus of the duties, *&c.* hereby appropriated, at the end of any quarter, ſhall attend the diſpoſition of parliament.

74. Sect. 25. In caſe the produce of the ſaid duties, *&c.* ſhall be deficient, ſuch deficiency ſhall be made good out of the produce of the ſaid duties, *&c.* in any ſubſequent quarter.

75. Sect. 26. If ſuch deficiency ſhall happen at the end of any year (reckoning each year to end at *Michaelmas)* ſuch deficiency ſhall be made good out of the next aids to be granted in parliament.

76. Sect. 38. It ſhall be lawful for the Bank, from time to time, as they ſhall ſee cauſe, to call for, from their members, in proportion to their reſpective intereſts in the capital ſtock, any ſums of money, as in a general court ſhall be judged neceſſary; and all executors, *&c.* ſhall be indemnified in paying the ſame; and if any member ſhall neglect to pay his ſhare of the monies ſo called for, at the time appointed, by notice in the *London* Gazette, and fixed upon the *Royal-Exchange*, it ſhall be lawful for the Bank, not only to ſtop the dividend of ſuch member, and to apply the ſame towards payment of the money ſo called for, but alſo to ſtop the transfers of the ſhare of every ſuch defaulter, and to charge him with an intereſt of *5 per cent. per annum*, for the monies ſo by him omitted to be paid, till payment thereof; and

and if the principal and intereſt ſhall be three months unpaid, the Bank ſhall have power to ſell ſo much of ſuch defaulter's ſtock, as will ſatisfy the ſame, rendering the over-plus to the proprietors; and the Bank may, in a general court, when they ſhall adjudge their affairs will admit thereof, cauſe any ſum of money ſo called in, to be divided amongſt the then members, in proportion to their reſpective ſhares in the capital ſtock.

77. Sect. 39. The Bank may borrow money on any contracts, *&c.* under their common ſeal, or upon credit of their capital ſtock, at ſuch intereſt as they ſhall think fit, though it exceed the intereſt allowed by law, and give ſuch ſecurity as ſhall be to the ſatisfaction of the lenders: And they may contract with any perſons, upon ſuch terms as they ſhall find neceſſary, for the better enabling them to perform ſuch things as they are to do in purſuance of this act, and take ſubſcriptions from ſuch perſons for that purpoſe; and ſuch contracts, *&c.* ſhall not be chargeable with ſtamp-duties.

78. Sect. 43. No member of the Bank, for any thing in this act contained, ſhall be diſabled from being a parliament-man, or adjudged liable to be a bankrupt.

79. Sect. 45. The Bank may in a general court, make ſuch addition to their capital ſtock, (in regard of their undertaking to diſcharge Exchequer-bills) as they ſhall think fit; and ſo much as ſhall be ſo declared, ſhall be deemed capital ſtock; and the members of the Bank who ſhall have a ſhare in ſuch ſtock, may transfer the ſame in the method, *&c.* preſcribed by any ſtatute, or charter now in force for aſſignments.

80. Sect. 49. The Bank ſhall continue a corporation, and enjoy the ſaid ſeveral annuities, till all the ſaid annuities ſhall be redeemed according to the proviſos in this act.

81. Sect. 50. For encouragement of ſuch perſons as are willing to advance monies for paying off the

principal ſums amounting to 8,762,625 *l.* upon the lottery-acts of 9 and 10 *Ann.* for redeeming annuities on an act, 12 and 13 *Will.* III. cap. 12, to patentees out of the weekly ſum of 3,700 *l.* out of the exciſe, for which the perſons advancing the ſame, are to have annuities of 5 *l. per cent.* redeemable by parliament; it is enacted, that till the annuities of 5 *l. per cent.* ſhall be redeemed by parliament, the Bank ſhall employ two perſons, within their office in *London*, one to be their chief caſhier, the other their accountant-general; and the monies coming into the Exchequer, for the payment of ſuch annuities, ſhall be paid quarterly to the ſaid caſhier, by way of impreſt, and on account; and the accountant-general ſhall inſpect the receipts and payments of the caſhier, and the vouchers relating thereto; and all the monies to be advanced for ſuch annuities, ſhall be one capital or joint ſtock, on which the ſaid annuity ſhall be attending; and all perſons, in proportion to the monies they ſhall advance, ſhall have a ſhare in ſuch ſtock, and in the annuity attending the ſame; and ſuch ſhares ſhall be transferrable and deviſeable, as is preſcribed by the act 1 *Geo.* I. cap. 19, and no ſtamp-duties ſhall be chargeable on ſuch transfers; and the bank (notwithſtanding the redemption of any of their own funds or annuities) ſhall continue a corporation, relating to the receiving, *&c.* the annuities laſt mentioned, till the ſame be redeemed by parliament; and no fees ſhall be taken for paying the ſaid annuities, or for ſuch transfers. Nevertheleſs, the Treaſury may allow out of the monies to be impreſted as aforeſaid, ſalaries to the caſhier and accountant general.

82. Sect. 51. Transfers of Bank-ſtock ſhall not hereafter be made liable to any higher duties than are now payable for the ſame.

83. Sect. 53. The Bank may, under their common ſeal, aſſign the ſaid annuities of 100,000 *l.* or any part thereof, and alſo ſuch annuities of 5 *l. per cent. per annum*, to any perſons whatſoever, and ſo to-

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ties quoties; which aſſignments ſhall not be ſubject to any tax, ſo as an entry be made of ſuch aſſignments in the office of the auditor of the receipts.

84. Sect. 54. Nothing in this act ſhall hinder the making good any deficiency in the yearly fund of 116,573 *l.* 12 *s.* mentioned in the act, 1 *Geo.* I. cap. 2.

85. Sect. 55. Any vote of the Houſe of Commons, ſignified by their ſpeaker in writing, and delivered at the office of the Bank, ſhall be deemed a ſufficient notice within this act.

86. Stat. 11 *Geo.* I. cap. 9. ſect. 1. The governor and company of the Bank of *England*, having agreed, that from the feaſt-day of St. *John Baptiſt*, 1727, their annuity of 100,000 *l.* upon the ſum of 2,000,000 *l.* (ſee par. 64.) ſhall be reduced to 4 *l.* *per cent.* it is enacted, that after the nativity of *St. John Baptiſt*, 1727, the ſaid annuity ſhall ceaſe, and the governor and company of the Bank (ſubject to the proviſo of redemption, in this act contained) ſhall have in lieu thereof, one annuity of 80,000 *l.* which ſhall be payable out of the duties on houſes, and the aggregate fund; and ſhall be paid to the ſaid governor and company, and their ſucceſſors for ever, from *Midſummer*, 1727, at the four uſual feaſts, in ſuch manner, and on ſuch conditions, as in the former acts 3 *Geo.* I. *cap.* 8, in relation to the ſaid annuity of 100,000 *l.*

87. Sect. 2. On repayment by parliament to the Bank of *England*, of the principal ſum of 2,000,000 *l.* and of all arrears of the ſaid annuity, the annuity ſhall ceaſe.

88. Sect. 3. If at any time payment be made of any ſum (not leſs than 500,000 *l.*) in part of the principal ſum, and of all arrearages; then ſo much of the ſaid annuity, as ſhall bear proportion to the monies ſo paid in part of the principal, ſhall ceaſe.

89. Sect. 4. The annuity ſhall be deemed perſonal eſtate; and the ſame, and the ſtock which the ſaid company now have, or may be entitled unto, by

virtue of this act; and alſo the principal ſums and annuities, payable to the company in reſpect of any ſuch ſtock, ſhall be free from taxes, and ſhall not be liable to foreign attachments.

90. Sect. 5. The former acts, and all the powers, *&c.* therein contained, (ſuch alterations as are made by this act, excepted) ſhall continue to be uſed, *&c.* and the governors and company of the Bank of *England*, ſhall continue a corporation, and ſhall enjoy theſe annuities till they ſhall be redeemed, *&c.*

91. Sect. 6. If any perſon ſhall alter, forge or counterfeit any Bank-bill, or Bank-note made for payment of money, by, or for the ſaid governor and company, or any Bank-note, or ſhall eraſe any ſuch bill or note, or any endorſement thereupon, or ſhall tender in payment, either, *&c.* any ſuch altered, forged, or counterfeited bill, or note, or any eraſed or altered bill or note, or the endorſement thereupon, *&c.* (knowing ſuch bill or note, or endorſement, to be altered, forged, counterfeited, or eraſed) and with intention to defraud the ſaid governor and company, or any other perſon; every ſuch perſon ſhall be adjudged a felon.

92. Stat. 1 *Geo.* II. ſtat. 2. *cap.* 8. ſect. 1. The governor and company of the Bank of *England*, having agreed to pay into the Exchequer, 1,750,000 *l.* for the purchaſe of an annuity of 70,000 *l.* ſubject to redemption; it is enacted that every year after the feaſt-day of *St. John Baptiſt*, 1728, a yearly fund of 70,000 *l.* being 4 *l. per cent.* for the ſum of 1,750,000 *l.* ſhall be payable in manner herein expreſſed, for ſatisfying the annuities to be purchaſed in purſuance of this act, till redemption thereof by parliament.

93. Sect. 2. The ſaid yearly fund of 70,000 *l.* ſhall be payable out of the monies which after the ſaid feaſt of *St. John Baptiſt*, 1728, ſhall ariſe into the Exchequer, for the duties on coals and culm, granted by 9 *Ann. cap.* 22, continued by 5 *Geo.* I. *cap.* 9, and made perpetual by 6 *Geo.* I. *cap.* 4.

94. Sect.

94. Sect. 3. The governor and company of the Bank of *England*, ſhall advance into the receipt of his Majeſty's Exchequer, the ſum of 1,750,000 *l.* by the 24th of *July*, 1728.

95. Sect. 5. On payment by the Bank, of the ſaid ſum of 1,750,000 *l.* in manner aforeſaid, the governor and company, and their ſucceſſors and aſſigns, ſhall be intitled to receive at the receipt of the Exchequer, out of the ſaid yearly fund, one annuity of 70,000 *l*, to commence from the 24th of *June*, 1728, and to be paid by half-yearly payments, at *Chriſtmas* and *Midſummer*, till redemption thereof by parliament, and the ſaid annuity of 70,000 *l.* ſhall be free from taxes.

96. Sect. 6. An order ſhall be ſigned by the Treaſury, for payment of the ſaid annuity, and the ſame ſhall not be determined by the deaths or removal of any of the commiſſioners of the Treaſury, *&c*,

97. Sect. 7. As the money of the ſaid duties ſhall be brought into the Exchequer, the ſame ſhall be iſſued upon the ſaid orders, towards diſcharging the ſaid annuity, to grow due at the end of the half year, in which ſuch payment ſhall be made; ſo as ſuch payment do not exceed the half-yearly payment which ſhould grow due.

98. Sect. 8. The ſaid annuity ſhall be a perſonal, and not a real eſtate, and ſhall not be liable to foreign attachment.

99. Sect. 9. If after the 24th of *June*, 1728, the produce of the ſaid impoſitions on coals and culm ſhall be ſo deficient, as that the monies ariſing therefrom ſhall not be ſufficient to diſcharge the half-year's annuity then due, then the deficiency of ſuch half-year ſhall be ſupplied out of the overplus monies of the ſaid duties ariſing in any ſubſequent half year; and if at any time after the 25th of *December*, 1728, ſuch produce ſhall be ſo deficient at the end of any one year (computing the ſame to begin at *Chriſtmas* yearly) as that the ſame ſhall not be ſufficient to diſcharge the whole year's annuity then due, every ſuch

yearly deficiency ſhall be made good out of the firſt ſupplies which ſhall be granted in parliament; and if no ſuch ſupplies ſhall be granted within ſix months, then the ſame ſhall be made good out of any monies which ſhall be in the receipt of the *Exchequer* of the ſinking fund, except ſuch monies of that fund as are appropriated to particular uſes.

100. Sect. 10. Whatever monies ſhall be ſo iſſued out of the ſinking fund, ſhall be replaced out of the firſt ſupplies to be granted in parliament.

101. Sect. 11. If there ſhall be any ſurplus monies ariſing by the ſaid duties, at the end of any year (computing the ſame to end at *Chriſtmas* yearly) after the ſaid annuity of 70,000*l.* and all arrears thereof, are ſatisfied, *&c.* ſuch ſurplus ſhall be reſerved for the diſpoſition of parliament.

102. Sect. 12. Upon repayment by parliament to the Bank of *England* of the ſaid 1,750,000*l.* and of all arrears, the ſaid annuity ſhall ceaſe; and after ſuch redemption the monies ariſing by the ſaid duties ſhall not be applied but as ſhall be directed by future acts of parliament.

103. Sect. 13. If at any time after the 25th of *December*, 1729, payment be made to the Bank of any ſum (not leſs than 500,000*l.*) in part of the principal ſum at which the annuity is redeemable, and alſo of all arrears of the ſaid annuity, then ſo much of the annuity as ſhall bear proportion to the monies ſo paid in part, ſhall ceaſe.

104. Sect. 14. The Bank ſhall continue a corporation till redemption of the whole annuity of 70,000*l.*

105. Sect. 15. All former powers granted to the Bank, for aſſigning any annuities or capital ſtocks formerly purchaſed by them, and now belonging to them, ſhall be revived; and the governor and company are impowered to transfer the ſaid annuity of 70,000*l.* as they ſhall think proper, ſubject nevertheleſs to redemption by parliament, and without power to enlarge their capital ſtock out of the ſame.

106. Stat. 2 *Geo.* II. *cap.* 3. ſect. 1. After reciteing the act of 12 *Ann.* ſeſs. 2. *cap.* 9. for laying additional duties on ſoap and paper, and on certain linnens, ſilks, callicoes and ſtuffs, and upon ſtarch, and exported coals, and upon ſtamped vellum, parchment, and paper, *&c* and that the governor and company of the Bank of *England* have agreed to pay into the Exchequer 1,250,000*l.* for the purchaſe of an annuity of 50,000*l.* ſubject to redemption by parliament, to be charged on the ſurplus monies to ariſe from the ſaid additional duties; it is enacted, that yearly, from the feaſt of St. *John* Baptiſt, 1729, a yearly fund of 50,000*l.* be ſettled for ſatisfying the annuities to be purchaſed in purſuance of this act, till redemption thereof by parliament.

107. Sect. 2. The ſaid yearly ſum of 50,000*l.* ſhall be payable out of the overplus monies of the ſaid additional duties, which ſhall remain after ſatisfying, *&c.* ſo much as ſhall be due to the *South-Sea* company on their annuity, and additional allowance for charges of management, granted by the act 6 *Geo.* I. *cap.* 4: and the Treaſury ſhall quarterly, in every year, after the feaſt of St. *John* Baptiſt, 1729, at the four uſual feaſts, or within ſix days after, cauſe the overplus monies of the ſaid additional duties to be computed, and applied towards making good the ſaid yearly ſum of 50,000*l.* without diverting any part of the monies which, by the ſaid act 6 *Geo.* I. *cap.* 4, ought to be reſerved for ſatisfying the ſaid annuity to the *South-Sea* company.

108. Sect. 3. The governor and company of the Bank of *England*, ſhall pay into the Exchequer 1,250,000*l.* before the 6th of *October*, 1729.

109. Sect. 5. On payment of the ſaid 1,250,000*l.* the company ſhall be entitled to one annuity of 50,000*l.* from the 24th of *June*, 1729, to be paid by quarterly payments, till redemption thereof by parliament; and the ſaid annuity of 50,000*l.* ſhall be free from taxes.

110. Sect. 6. Orders shall be signed by the Treasury for payment of the said annuity, &c. as in paragraph 96,

111. Sect. 7. The said annuity shall be a personal estate, and shall not be liable to foreign attachment.

112. Sect. 8. If the overplus monies of the said additional duties shall be deficient, &c. the deficiency shall be supplied; as *in paragraphs* 99, 100, 101.

113. Sect. 11. Upon repayment by parliament to the Bank of *England* of the said sum of 1,250,000 *l.* and of all arrears of the said annuity of 50,000 *l.* the said annuity shall cease, and the monies arising by the surpluses of the said additional duties, shall not be issued or applied to any other use, but as shall be directed by future acts of parliament.

114. Sect. 12. If payment be made to the Bank of any sum (not being less than 500,000 *l.* at a time) in part of the said principal sum; and if payment be then also made of all arrears of the said annuity, then so much thereof as shall bear proportion to the monies so paid in part of the said principal sum, shall cease.

115. Sect. 13. The Bank shall continue a corporation till redemption of the said annuity of 50,000 *l.*

116. Sect. 14. The Bank may assign the said annuity of 50,000 *l.* or any part thereof; but subject to such redemption by parliament.

117. Sect. 16. Out of the sinking fund there shall be paid to the Bank 500,000 *l.* for redeeming a proportionable part of the annuity of 80,000 *l.* granted to them by stat. 11 *Geo.* I. *cap.* 9. See paragraph 86.

118. Stat. 11 *Geo.* II. *cap.* 27. sect. 16. At the feast of St. *Michael*, 1738, there shall be issued to the governor and company of the Bank of *England*, the sum of 1,000,000 *l.* out of any aids granted in this session of parliament, for redeeming the annuity of 40,000 *l.* part of the annuity of 60,000 *l.* in further part of the principal sum of 2,000,000 *l.* being the amount of exchequer-bills delivered up by the

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Bank according to the directions of the act 3 *Geo.* I. *cap.* 8; and in reſpect whereof an annuity of 80,000*l.* was payable to the Bank by the act 11 *Geo.* I. *cap.* 9; and of which an annuity of 20,000*l.* was redemeed by payment of 500,000*l.* purſuant to the act 2 *Geo.* II. *cap.* 3.

119. Stat. 15 *Geo.* II. *cap.* 13. ſect. 1. The governor and company of the Bank of *England*, and their ſucceſſors, ſhall advance and pay into the Exchequer the full ſum of 1,600,000*l.* on or before the 25th day of *December*, 1742, at ſuch times, and in ſuch proportions as the commiſſioners, of the Treaſury, *&c.* ſhall think fit to direct and appoint; ſo as the ſaid governor and company be not obliged to pay more than 400,000*l.* at one time, nor without having one month's notice before each reſpective time of payment.

120. Sect. 2. Provided that out of the ſaid ſum of 1,600,000*l.* the ſaid governor and company ſhall have and receive back, by way of diſcount, ſo much as the intereſt at the rate of 3 *per cent. per annum*, for each ſum of money which ſhall be actually advanced and paid for upon account of the ſum of 1,600,000*l.* ſhall amount unto, from the day of the actual payment thereof until the 1ſt day of *Auguſt*, 1743; and, in caſe the ſaid governor and company of the Bank of *England*, ſhall make failure in any of the ſaid payments, at or before the reſpective days or times before limited in that behalf, the money whereof ſuch failure in payment ſhall be made, ſhall and may be recovered to his majeſty's uſe by action of debt, or upon the caſe, bill, ſuit, or information, in any of his majeſty's courts of record at *Weſtminſter*; wherein no eſſoin, *&c.* ſhall be allowed; or any more than one imparlance: in which action, *&c.* it ſhall be lawful to declare, that the governor and company of the Bank of *England* are indebted to his majeſty the monies which they ſhall have made in default of payment, according to the form of this ſtatute, and have not paid the ſame which ſhall be ſufficient; and in or

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upon ſuch action, &c. there ſhall be further recovered to his majeſty's uſe, againſt the ſaid governor and company of the ſaid Bank of *England*, damages after the rate of 12*l. per cent.* for the monies ſo unpaid contrary to this act, beſides full coſts of ſuit: and the ſaid governor and company of the Bank of *England*, and their ſucceſſors, and their ſaid ſtock and funds, ſhall and are hereby made liable and ſubject thereunto.

121. Sect. 3. And for the encouragement of the ſaid governor and company of the Bank of *England* to advance and pay the ſaid ſum of 1,600,000*l.* with ſuch diſcount out of the ſame as aforeſaid: and to the end the ſaid governor and company, and their ſucceſſors, may have a competent recompence and conſideration for ſo doing, it is enacted, that the ſaid ſeveral and reſpective proviſoes contained in the ſaid recited acts of the 7th and 12th years of the reign of her late majeſty queen *Anne*, and each of them, and all other proviſoes contained in any other act or acts of parliament, for determining the ſaid fund of 100,000*l. per annum*; and the ſaid corporation of the governor aud company of the Bank of *England*, upon the reſpective notices and payments in the ſame reſpective acts mentioned, ſhall be, and are hereby, repealed and made void; and, that the ſaid governor and company of the Bank of *England* ſo enlarged, as aforeſaid, and their ſucceſſors, for ever ſhall remain, continue, and be one body corporate and politic, by the name aforeſaid; and ſhall for ever have and enjoy the ſaid entire yearly fund of 100,000*l.* out of the ſaid rates and duties of exciſe, together with a perpetual ſucceſſion and privilege of excluſive banking, as herein after is mentioned, and all other abilities, capacities, &c. whatſoever, whereunto the governor and company of the Bank of *England* are, or before the making of this act were, entitled by the ſaid acts of the 7th and 12th years of queen *Anne*, or either of them, or by any other act or acts of parliament, grants, or charters whatſoever now in force; all which

which are by this act ratified and confirmed to the ſaid governor, and company, and their ſucceſſors, freed and diſcharged of and from the ſaid proviſoes and conditions of redemption hereby repealed as aforeſaid: and all other proviſoes, powers, *&c.* heretofore had, made, *&c.* for redeeming, determining, or makeing void the ſaid corporation or yearly fund of 100,000 *l.* and the ſaid privileges of excluſive banking, and other their abilities, capacities, powers, authorities, franchiſes, exemptions, privileges, profits, and advantages, or any of them; ſubject, nevertheleſs, to ſuch reſtrictions, rules and directions, and alſo to ſuch other agreements, matters and things, as in the ſaid acts and charters, or any of them now in force are contained or preſcribed, and alſo ſubject to the power and condition of redemption hereafter in this act contained in this behalf.

122. Sect. 4. Provided that at any time, upon twelve months notice after the 1ſt day of *Auguſt*, which ſhall be in the year 1754, and not before; and upon repayment by parliament to the ſaid governor and company of the Bank of *England*, or their ſucceſſors, as well of the ſaid ſum of 1,600,000*l*, formerly advanced, as of the ſum of 1,600,000*l*. before-mentioned, now to be advanced, amounting in the whole to the ſum of 3,200,000*l*. without any deduction, diſcount, or abatement whatſoever to be made out of the ſum of 3,200,000 *l*, or any part thereof; and upon payment to the ſaid governor and company, and their ſucceſſors, of all the arrears of the 100,000*l*. *per annum*, and all the principal and intereſt money which ſhall be owing unto them upon ſuch tallies, exchequer-orders, exchequer-bills, or parliamentary funds, which the ſaid governor and company, or their ſucceſſors, ſhall have remaining in their hands, or be entitled to, at the time of ſuch notice to be given as aforeſaid; ſuch funds for redemption, whereof other proviſion is made in and by one act of parliament made and paſſed in the 8th *Geo.* I. intitled, *An act to enable the* South-Sea *company*

to diſpoſe of the effects in their hands by way of lottery or ſubſcription, or to ſell part of their fund, or annuity, payable at the Exchequer, in order to pay the debts of the ſaid company, and for relief of ſuch who were intended to have the benefit of a late act touching the payment of 10 per cent *therein mentioned*; and in, and by, one other act of parliament made and paſſed in 1 *Geo.* II. intitled, *An act for granting an aid to his majeſty, by ſale of annuities to the Bank of* England *at* 4 l. per cent. redeemable by parliament, and charged upon the duties on coals and culm; and for further applying the produce of the ſinking fund and for enlarging the time for exchanging *Nevis* and St. *Chriſtopher*'s debentures for annuities of *3 l. per cent.* and for applying the arrears of his late majeſty's civil liſt revenues; and by one other act of parliament paſſed in 1 *Geo.* II. intitled, *An act for raiſing a ſum of* 1,250,000*l. by ſale of annuities to the Bank of* England, *after the rate of 4 l. per cent. per annum.* redeemable by parliament, and for applying the produce of the ſinking fund always and only excepted; then, and in ſuch caſe, and not till then, the ſaid yearly fund of 100,000*l.* ſhall ceaſe and determine.

123. Sect. 5. And to prevent any doubts that may ariſe concerning the privilege or power given by former acts of parliament to the ſaid governor and company of excluſive banking; and alſo in regard to the erecting any other bank or banks by parliament, or reſtraining other perſons from banking during the continuance of the ſaid privilege granted to the ſaid governor and company of the Bank of *England*, as before recited; it is hereby further enacted, *&c.* That it is the true intent and meaning of this act, That no other Bank ſhall be erected, eſtabliſhed, or allowed by parliament, and that it ſhall not be lawful for any body politic or corporate whatſoever erected, or to be erected: or for any perſons whatſoever united, or to be united, in covenants, or partnerſhip, exceeding the number of ſix perſons, in that part of *Great-Britain* called *England*, to borrow, owe, or take up any

any ſum or ſums of money, on their bills or notes payable at demand, or at any leſs time than ſix months from the borrowing thereof, during the continuance of ſuch ſaid privilege to the governor and company, who are hereby declared to be and remain a corporation, with the privilege of excluſive banking, as before recited, ſubject to redemption on the terms and conditions beforementioned; that is to ſay, on one year's notice after the 1ſt day of *Auguſt*, 1754, and repayment of 3,200,000*l.* and all arrears of, 100,000*l. per annum*; and all the principal and intereſt money that ſhall be owing them; and all ſuch tallies, exchequer orders, exchequer-bills, or parliamentary funds (ſuch funds as are before mentioned only and always excepted) which the ſaid governor and company, or their ſucceſſors, ſhall have remaining in their hands, or be entitled to, at the time of ſuch notice to be given as aforeſaid, and not otherwiſe.

124. Sect. 6. It ſhall be lawful for the ſaid governor and company of the Bank of *England*, and their ſucceſſors, in caſe they ſhall think fit, and not otherwiſe, to admit and take in ſubſcriptions from ſuch perſon or perſons, and upon ſuch terms and conditions, and at ſuch time, as they ſhall think proper, for enlarging their preſent capital to any ſum not exceeding the further ſum of 1,600,000*l.* additional ſtock; and, from time to time, in a general court to declare, order, and make the ſame, or any part thereof; and from ſuch time or times, as ſuch general court ſhall order and direct, to be added to the preſent capital ſtock of the ſaid governor and company; and that then, and from thenceforth, ſuch monies ſhall be deemed, and taken, to all intents and purpoſes, and as for part of the capital ſtock of the ſaid governor and company: and the capital ſtock of the ſaid governor and company, ſhall be proportionably enlarged thereby; and that all and every the perſon and perſons, natives and foreigners, who ſhall

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ſubſcribe any ſum or ſums of money, or from whom any ſum or ſums of money, that ſhall have been ſubſcribed towards the making up the ſaid further ſum of 1,600,000*l.* ſtock, or ſuch part thereof, or which the ſaid governor and company ſhall take in ſubſcriptions, and who ſhall have paid to the ſaid governor and company the ſum ſo ſubſcribed; and the executors, adminiſtrators, and aſſigns, of ſuch perſon or perſons reſpectively, ſhall be, and are, deemed and reputed to be members of, and united to, and incorporated with, the ſaid governor and company of the Bank of *England*; and ſhall at all times, together with the other members of the ſaid corporation and body politic, and their ſucceſſors reſpectively, be and are adjudged, conſtrued and reputed, accepted and taken, to be one body politic and corporate, by the name of *The governor and company of the Bank of* England, ſubject to the ſame rules, orders and regulations, and entitled to the ſame privileges, advantages, and immunities, with the preſent members of the ſaid corporation.

125. Sect. 7. The capital ſtock of the ſaid governor and company of the Bank of *England*, ſo increaſed, as aforeſaid, ſhall be aſſignable and transferable in the ſame manner as the original capital ſtock of the ſaid governor and company was aſſignable and transferrable before the making of this act, and, together with the produce thereof, ſhall be free from parliamentary taxes, charges, and impoſitions, and all other taxes, charges, and impoſitions whatſoever; and the transfers and aſſignments of the ſtock, and additional ſtock, in the books of the ſaid company, ſhall not hereafter be, or be made liable to any higher or greater ſtamp, or other duties, than are now payable for the transfers or aſſignments of their preſent ſtock, or any part thereof.

126. Sect. 8. No perſon, in reſpect of his being governor, deputy-governor, director, manager, or member of the ſaid company, or for having any

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ſtock or ſhare therein, or for any matter or thing to be by him done or performed in the affairs of the ſaid corporation, ſhall be now, or in any time hereafter, diſabled from being or continuing, or from being elected or ſerving, as a member of parliament; or be liable or ſubject to any penalty, forfeiture, or diſability preſcribed by any other act or acts of parliament, for not qualifying himſelf to execute his truſt with reſpect to the affairs of the ſaid corporation, as perſons who ſhall take or execute any office, or place of profit or truſt, are ſubject and liable unto by any law now in force, or be adjudged liable to be a bankrupt, within the intent or meaning of all or any the ſtatutes made againſt or concerning bankrupts.

127. Sect. 9. Provided that the ſaid governor and company of the Bank of *England*, and their ſucceſſors, ſhall have, receive and enjoy, the ſaid annuity of 100,000 *l.* now payable to them in reſpect of their ſaid original capital ſtock of 1,600,000 *l.* until the ſaid firſt of *Auguſt*, 1743, over and above the intereſt of the ſaid ſum of 1,600,000 *l.* to be advanced as aforeſaid; which intereſt the ſaid governor and company are to receive back, by way of diſcount, in the manner herein before mentioned.

128. Sect. 10. Any vote or reſolution of the Houſe of Commons, ſignified by the ſpeaker of the ſaid Houſe in writing, and delivered at the public office of the ſaid governor and company, or their ſucceſſors, ſhall be deemed and adjudged to be a ſufficient notice within the words or meaning of this act.

129. Sect. 11. If any perſon or perſons ſhall forge, counterfeit, or alter any bank-note, bank-bill of exchange, dividend-warrant, or any bond or obligation, under the common ſeal of the ſaid company, or any indorſement thereon, or ſhall offer or diſpoſe of, or put away any ſuch forged counterfeit or altered note, bill, dividend-warrant, bond or obligation, or the indorſement thereon, or demand the money therein contained or pretended to be due thereon, or any part thereof,

thereof, of the ſaid company; or any, their officers or ſervants, knowing ſuch note, bill, dividend-warrant, or obligation or the indorſement thereon to be forged, counterfeited or altered, with intent to defraud the ſaid company, or their ſucceſſors, or any other perſon or perſons; the perſon ſo offending, and being thereof convicted in due form of law, ſhall be deemed guilty of felony, and ſhall ſuffer death as a felon, without benefit of clergy.

130. Sect. 12. If any officer or ſervant of the ſaid company, being intruſted with any note, bill, dividend-warrant, bond, deed, or any ſecurity or effects, of any other perſon or perſons lodged or depoſited with the ſaid company, or with him, as an officer or ſervant of the ſaid company, ſhall ſecrete, imbezzel, or run away with any ſuch note, bill, dividend-warrant, bond, deed, ſecurity, money, or effects, or any part of them; every officer or ſervant ſo offending, and being thereof convicted in due form of law, ſhall be deemed guilty of felony, and ſhall ſuffer death as a felon, without benefit of clergy.

131. Sect. 13. When ever a court of directors is ſummoned or appointed to be held, and the directors ſhall be met according to ſuch ſummons or appointment; if it ſhall ſo happen that the governor and deputy-governor for the time being, ſhall be abſent for the ſpace of two hours after the uſual time of proceeding to buſineſs, it ſhall and may be lawful for the directors, who ſhall be then met (of whom there ſhall be always thirteen or more) or the major part of them, to chooſe a chair-man for that time and proceed to buſineſs; and, that the proceedings and acts of the ſaid court of directors ſhall be as valid and effectual, to all intents and purpoſes, as if the ſaid governor or deputy-governor had been preſent.

132. Sect. 14. This act ſhall be deemed, adjudged and taken to be a public act, and be judicially taken notice of by all judges, juſtices, and other perſons whatſoever, without ſpecially pleading the ſame.

133. Stat. 19 *Geo.* II. *cap.* 6. ſect. 1. The governor and company of the Bank of *England*, or their ſucceſſors, ſhall, and they are hereby required, on or before the 25th of *March*, 1746, to deliver up unto ſuch perſon or perſons as the commiſſioners of the Treaſury, *&c.* ſhall nominate all the exchequer-bills charged upon the duties ariſing by licences, amounting in the whole to the ſum of 986,800*l.* to be diſcharged, cancelled and made void, in ſuch manner as the ſaid commiſſioners of the Treaſury, *&c.* ſhall appoint without iſſuing again the ſame or any of them.

134. Sect. 2. And all the intereſt, or premium, which ſhall be due upon the ſaid exchequer-bills ſo to be delivered up to be cancelled and made void, together with the charges of circulating the ſame, ſhall be fully cleared and paid off.

135. Sect. 3. And for, and in lieu of the ſaid principal ſum of 986,800*l.* in exchequer-bills, herein before directed, to be delivered to be cancelled and made void; the ſaid governor and company of the Bank of *England*, and their ſucceſſors ſhall from and after the ſaid 21ſt of *March*, 1746, be intitled to have, receive and enjoy at the ſaid receipt of the Exchequer, one annuity or yearly ſum of 39,472 *l.* being after the rate of 4*l. per cent. per annum*, for, and upon the ſaid principal ſum of 986,800*l.* to be paid and payable in the manner and form herein after mentioned, until redemption thereof by parliament, according to the proviſo herein after contained for that purpoſe.

136. Sect. 4. And the ſaid yearly fund or ſum of 39,472*l.* is and ſhall by virtue of this act, be charged and chargeable upon, and ſhall be paid and payable from time to time in the firſt place, and with preference to all other payments whatſoever, out of the monies which ſhall ariſe in the ſaid receipt of Exchequer, of, or for the duties payable to his majeſty, for licences to ſell ſpirituons liquors, and ſtrong waters

by retail, in purſuance of the act, of the 16th year of his Majeſty's reign.

137. Sect. 5. And the ſaid governor and company of the Bank of *England*, and their ſucceſſors ſhall have, receive and enjoy at the receipt of the Exchequer, by and out of the ſaid yearly fund eſtabliſhed as aforeſaid, one annuity or yearly ſum of 39,472 *l.* of lawful money of *Great Britain*, to commence from the ſaid 25th of *March*, which ſhall be in the year of our Lord, 1746, and to be paid and payable to them and their ſucceſſors for ever, at the 4 moſt uſual feaſts in the year, *viz.* the feaſt of the nativity of *St. John Baptiſt*, *St. Michael*, the *Arch-angel*, the *Birth of our Lord Chriſt*, and the *Annunciation of the bleſſed virgin*, *Mary*; by even and equal portions, the firſt quarterly payment thereof, to be made at the feaſt of the nativity of *St. John the Baptiſt*, which ſhall be in the ſaid year, 1746, ſubject nevertheleſs to the proviſo of redemption herein after contained for that purpoſe, and that the ſaid annuity or yearly ſum of 39,472 *l.* and every part thereof ſhall be free from all manner of taxes, impoſitions or charges whatſoever.

138. Sect. 6. And for the better and more regular payment of the ſaid annuity of 39,472 *l.* to the ſaid governor and company of the Bank of *England*, and their ſucceſſors for ever, ſubject to the redemption aforeſaid, an order or decree ſhall be ſigned by the commiſſioners of the Treaſury, for the payment thereof, and after ſigning thereof, the ſame ſhall be good, valid and effectual in the law, according to the purport and true meaning thereof, and of this act, and ſhall not be determinable by or upon the death or removal of any of the ſaid commiſſioners of the Treaſury, or the lord high treaſurer, or by, or upon the determination of the power, office or offices of them, or any of them, nor ſhall any commiſſioners of the Treaſury, or lord high treaſurer, have power to revoke, countermand, or make void ſuch order or orders, ſo ſigned as aforeſaid.

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139. Sect. 7. And for the more ſpeedy payment of the ſaid annuity or yearly ſum of 39,472 *l.* to the ſaid governor and company as aforeſaid, it is hereby declared and enacted, that weekly or otherwiſe, as the money of the ſaid duties ſhall from time to time be brought into the ſaid receipt of Exchequer, the ſame ſhall and may be iſſued upon the ſaid order or orders, for or towards diſcharging the ſaid annuity, to grow due for and at the end of the quarter in which ſuch payment ſhall be made, ſo as ſuch weekly or other payments do not exceed the ſum of the quarterly payments which ſhould grow due for, or at the end of every ſuch quarter reſpectively.

140. Sect. 8. And the ſaid annuity of 39,472 *l.* and every part thereof, ſhall be adjudged to be a perſonal, and not a real eſtate, and ſhall not be liable to any foreign attachment.

141. Sect. 9. And if at any time or times after the ſaid 25th of *March*, 1746, the produce of the ſaid duties ariſing by licences, ſhall be ſo low and deficient, as that the monies ariſing from them into the Exchequer, at the end of any of the ſaid quarterly feaſts, ſhall not be ſufficient to pay and diſcharge the quarter's annuity, then due and payable, according to the tenor and true meaning of this act, then the deficiency of any ſuch quarter ſhall and may be ſupplied out of the overplus monies of the ſaid duties ariſing in any ſubſequent quarter; and in caſe, at any time or times after the ſaid 25th of *March*, 1746, ſuch produce ſhall be ſo low or deficient at the end of any one year computing the ſame to end at *Lady day*, yearly) as that the ſame ſhall not be ſufficient to pay and diſcharge the years annuity then grown due, then every ſuch yearly deficiency ſhall from time to time be anſwered and made good, by and out of the ſaid ſurpluſſes, which ſhall be granted in parliament, next after ſuch deficiency ſhall appear; and in caſe no ſuch ſurpluſſes ſhall be granted within ſix months next after ſuch deficiency ſhall happen, then the ſame ſhall be made good out of any the monies which

at any time or times ſhall be or remain in the receipt of the Exchequer, or the ſurpluſſes, exceſſes, or over-plus monies, commonly called the *Sinking Fund*, (except ſuch monies of the *Sinking Fund* as are appointed to any particular uſe or uſes, by any former act or acts of parliament in that behalf) and ſuch monies of the *Sinking Fund*, ſhall and may be from time to time iſſued and applied accordingly.

142. Sect. 10. Provided that whatever money ſhall be iſſued out of the ſaid *Sinking Fund*, ſhall from time to time be replaced by and out of the firſt overplus, to be then after granted in parliament.

143. Sect. 11. Provided that upon repayment by parliament, to the ſaid governor and company of the Bank of *England*, and their ſucceſſors of the ſaid principal ſum of 986,800 *l.* without any deduction, diſcount or abatement whatſoever, to be made out of the ſame or any part thereof, and of all arrears of the ſaid annuity or yearly ſum of 39,472 *l.* then and not till then the ſaid annuity or yearly ſum, ſhall from thence forth ceaſe, and be underſtood to be redeemed. And from and after ſuch redemption, the monies ariſing by the ſaid duties for licences, by this act directed to be ſet apart, for the payment of the ſaid annuity or yeatly ſum of 39,472 *l.* and not be iſſued or applied for any other uſe or purpoſe, but ſhall be directed by future act or acts of parliament.

144. Sect. 12. And if at any time or times after the ſaid 25th of *March*, 1746; payment be made to the ſaid governor and company of the Bank of *England*, of any ſum or ſums of money not leſs than one moiety of the ſaid ſum of 986,800 *l.* at a time, and alſo if payment be likewiſe made, of all arrears of the ſaid annuity; then from and after ſuch payment ſo made, ſo much of the ſaid annuity as ſhall bear proportion to the monies ſo paid in part of the ſaid whole principal ſum, ſhall ceaſe, determine and be underſtood to be redeemed.

145. Sect. 13. It ſhall be lawful to and for the ſaid governor and company of the Bank of *England*, and

and their ſucceſſors, in caſe they ſhall think fit, and not otherwiſe, to admit and take in by ſale, call, or ſubſcription (or by ſuch other ways or means as they ſhall judge proper) from ſuch perſon or perſons, and upon ſuch terms or conditions, and at ſuch times as they ſhall think proper, for enlarging their preſent capital to any ſum not exceeding the further ſum of 986,800*l.* additional ſtock (over and above what they are impowered to create by every former act or acts of parliament in that behalf) and from time to time, in a general court, to declare, order, and make the ſame, or any part thereof (and from ſuch time or times as ſuch general court ſhall order and direct) to be added to the preſent capital ſtock of the ſaid governor and company; and that then, and from thenceforth, ſuch monies ſhall be deemed and taken to all intents and purpoſes, as and for part of the capital ſtock of the ſaid governor and company; and the capital ſtock of the ſaid governor and company ſhall be proportionably enlarged thereby, and that all and every the perſon and perſons, natives or foreigners, who ſhall ſubſcribe, anſwer, or pay in any ſum or ſums of money, or for whom any ſum or ſums of money ſhall have been ſubſcribed, anſwered, or paid in as aforeſaid, towards the making up the ſaid further ſum of 986,800*l.* ſtock, or ſuch part thereof for which the ſaid governor and company ſhall take in ſubſcriptions, or make ſuch ſale, call, or other demand, as aforeſaid; and who ſhall have paid to the ſaid governor and company the ſum ſo ſubſcribed, or otherwiſe demanded, as aforeſaid; and the executors, adminiſtrators and aſſigns of ſuch perſon and perſons reſpectively, ſhall be, and be deemed and reputed to be members of, and united to, and incorporated with, the ſaid governor and company of the Bank of *England*; and ſhall at all times, together with the other members of the ſaid corporation and body politic, and their ſucceſſors reſpectively, be, and be adjudged, conſtrued, reputed, accepted and

taken to be one body politic and corporate, by the name of *The governor and company of the Bank of* England, ſubject to the ſame rules, orders and regulations, and intitled to the ſame privileges, advantages and immunities, with the preſent members of the ſaid corporation; and that all executors, adminiſtrators, guardians and truſtees, ſhall be indemnified in making any ſuch payments upon ſuch calls, ſales, ſubſcriptions, or otherwiſe.

146. Sect. 14. The capital ſtock of the ſaid governor and company of the Bank of *England*, ſo increaſed as aforeſaid ſhall be aſſignable and transferrable in the ſame manner as the original capital ſtock of the ſaid governor and company was aſſignable and tranſferrable before the making of this act; and, together with the produce thereof, ſhall be free from all taxes, charges and impoſitions whatſoever; and the transfers and aſſignments of ſtock, or additional ſtock, in the books of the ſaid company, ſhall not hereafter be, or be made liable to any higher or greater ſtamp, or other duties, than are now payable for the transfers or aſſignments of their preſent ſtock, or any part thereof.

147. Sect. 15. The ſaid governor and company of the Bank of *England*, and their reſpective ſucceſſors, ſhall continue and be a corporation, and ſhall enjoy all the capacities, powers, privileges, immunities and advantages to them as a corporation belonging, until the compleat redemption of the ſaid annuity, or yearly ſum of 39,472 *l.* according to the before-mentioned proviſoes in that behalf, in as full and ample manner, to all intents and purpoſes whatſoever, as the ſame are contained, ſpecified and expreſſed in an act of parliament paſſed in the 15th *Geo.* II.

148. Sect 16. The ſaid governor and company of the Bank of *England*, and their ſucceſſors ſhall, and they are by this act enjoined and required, to advance and pay into the Receipt of his majeſty's Exchequer,

quer, towards the ſupply for the ſervice of the ſaid year 1746, any ſum or ſums of money not exceeding in the whole the ſum of one million, upon the credit of the ſeveral and reſpective rates, duties, and aſſeſſments granted to his majeſty by two ſeveral acts of parliament made and paſſed in this preſent ſeſſion of parliament, intitled, *An act for granting an aid to his majeſty by a land-tax to be raiſed in* Great-Britain *for the ſervice of the year* 1746; and alſo an act for continuing the duties upon malt, mum, cyder and perry, in that part of *Great-Britain* called *England*: and for granting to his majeſty certain duties upon malt, mum, cyder and perry, in that part of *Great-Britain* called *Scotland*, for the ſervice of the year 1746; which ſaid ſum of one million, ſo to be advanced by the governor and company of the Bank of *England*, ſhall be paid into the Receipt of Exchequer at ſuch times, and in ſuch proportions, as the commiſſioners of the Treaſury, *&c.* ſhall think fit to direct and appoint in that behalf; ſo as the governor and company be not obliged to pay more than 250,000*l.* at any one time or times, nor without having fourteen days notice before each reſpective time of payment.

149. Sect. 17. Upon payment of the ſaid ſum of one million, or any part thereof, into the Exchequer by the ſaid governor and company of the Bank of *England*, or their ſucceſſors, it ſhall be lawful to and for the ſaid commiſſioners of the Treaſury, *&c.* to cauſe exchequer-bills to be made forth at the ſaid receipt in ſuch manner as they ſhall think moſt ſafe and convenient for the ſaid ſum of one million, to be advanced or lent as aforeſaid, or any part thereof, to be charged upon, and payable out of the ſaid ſeveral and reſpective rates, duties and aſſeſſments granted by the ſaid two acts of parliament herein before recited, together with an intereſt after the rate of 4*l. per cent. per annum*, until repayment of the ſaid principal ſum of one million, in ſuch manner and form as are mentioned in the ſaid acts; and the ſaid exchequer-bills to be made forth as aforeſaid,

ſhall be ſubject to all ſuch orders, rules, methods, directions, powers, penalties and forfeitures, as are prefcribed, enacted and declared, in the ſaid two laſt recited acts, or either of them, in relation to exchequer-bills thereby authorized to be made forth.

150. Sect. 18. And in caſe the ſaid governor and company of the Bank of *England*, and their ſucceſſors, ſhall make failure in any of the ſaid payments ſo by this act appointed to be made unto the Exchequer, as aforeſaid, at or before the reſpective days or times to be limited in that behalf, the money whereof ſuch failure in payment ſhall be made, ſhall and may be recovered to his majeſty's uſe by action of debt, or upon the caſe, bill, ſuit, or information, in any of his majeſty's courts of record at *Weſtminſter*; in which action, *&c.* it ſhall be lawful to declare, that the ſaid governor and company of the Bank of *England* are indebted to his majeſty the monies of which they ſhall have made default in payment according to the form of the ſtatute, and have not paid the ſame, which ſhall be ſufficient; and in or upon ſuch action, *&c.* there ſhall be firſt recovered to his majeſty's uſe againſt the ſaid governor and company of the Bank of *England*, and their ſucceſſors, damages after the rate of 10 *l. per cent.* for the monies ſo unpaid contrary to this act, beſides full coſts of ſuit: and the ſaid governor and company of the Bank of *England*, and their ſucceſſors, and their ſaid ſtock and funds, ſhall be, and are, hereby made ſubject and liable thereunto.

151. Stat. 24 *Geo.* II. *cap.* 4. ſect. 21. Whereas doubts have ariſen with regard to the taking the oaths and affirmation, and ſubſcribing the declaration appointed by the charter of the governor and company of the Bank of *England*, to be taken and ſubſcribed by all and every the members of every general court; and whereas the adminiſtering the ſaid oath and affirmation, and ſubſcribing the declaration at every general court, will be a great delay to the proceedings of the ſaid general court; it ſhall, therefore, be lawful for the ſaid governor and company in any gene-

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ral court, to proceed to tranſact any buſineſs, without adminiſtering the ſaid oaths and affirmation to, or ſubſcribing the ſaid declaration by, all or any of the members of the ſaid court, unleſs required thereto by any nine or more of the proprietors preſent, qualified to vote at the ſaid general court according to the charter.

152. Sect. 22. When any court of directors of the ſaid governor and company ſhall be met according to any ſummons or appointment, and ſhall have notice, or be otherwiſe ſatisfied, that the governor and deputy-governor of the ſaid corporation will not be preſent, ſo as to hold the ſaid court of directors; or in caſe the ſaid governor and deputy-governor ſhall be abſent after the uſual time of proceeding to buſineſs, that then, and in ſuch caſe, it ſhall be lawful for the ſaid court of directors to chooſe a chairman for that time (which chairman ſhall alſo, in the like caſe, preſide at a general court if any ſhall at that time be ſummoned to meet) and to proceed to buſineſs, and tranſact the affairs of the corporation; and that the tranſactions of the ſaid general conrt and court of directors reſpectively, ſhall be as valid and effectual, to all intents and purpoſes, as if the ſaid governor or deputy-governor had been preſent.

153. Stat. 25 *Geo.* II. *cap.* 27. ſect. 1. Reciting that, in purſuance of 4 *Geo.* II. *cap.* 9, for raiſing 1,200,000*l.* by annuities and a lottery, ſeveral perſons did advance and lend 800,000*l.* part of the ſaid 1,200,000*l.* upon the credit of the duties in the ſaid act mentioned, for the purchaſe of annuities after the rate of 3 *l. per cent.* transferrable at the Bank of *England*, and redeemable by parliament: and, that in purſuance of an act 15 *Geo.* II. *cap.* 19, for raiſing 800,000*l.* to be raiſed by annuities transferrable at the Bank of *England*, ſeveral perſons did advance and lend the ſaid ſum of 800,000*l.* upon the credit of the ſurpluſſes, exceſſes or overplus monies, commonly called *The ſinking fund*, by the ſaid act granted and appropriated in that behalf for the purchaſe of

annuities

annuities after the rate of 3*l.* *per cent.* transferrable at the Bank of *England*, and redeemable by parliament: that, in purſuance of another act 16 *Geo.* II. *cap.* 13, for raiſing by annuities and a lottery the ſum of 1,800,000*l.* at 3*l.* *per cent.* *per annum*, for the ſervice of 1743, ſeveral perſons did advance and lend the ſaid ſum of 1,8000,000*l.* upon the credit of the duties therein mentioned, for the purchaſe of annuities after the rate of 3*l.* *per cent.* transferrable at the Bank of *England*, and redeemable by parliament: that, by 17 *Geo.* II. *cap.* 18, for raiſing the ſum of 1,800,000*l.* at 3*l.* *per cent.* *per annum*, for the ſervice of the year 1744, ſeveral perſons did advance and lend the ſaid ſum of 1,800,000*l.* upon the credit therein mentioned, for the purchaſe of annuities after the rate of 3*l.* *per cent.* transferrable at the Bank of *England* and redeemable by parliament: that, by 18 *Geo.* II. *cap.* 9, ſeveral perſons did advance and lend the ſum of 2,000,000*l.* for the purchaſe of annuities after the rate of 3*l.* *per cent.* transferrable at the Bank of *England*, and redeemable by parliament: that, by 23 *Geo.* II. *cap.* 18, ſeveral perſons did advance and lend the ſum of 1,000,000*l.* upon the credit therein mentioned, for the purchaſe of annuities after the rate of 3*l.* *per cent.* *per annum*, transferrable at the Bank of *England*, and redeemable by parliament: that the ſaid principal ſums, for which the ſaid ſeveral annuities, now carrying an intereſt of 3*l.* *per cent.* *per annum*, transferrable at the Bank, are payable, do amount, in the whole, to the ſum of 8,200,000*l.* and it is thought neceſſary, that the ſaid principal ſum be (with the conſent of the proprietors thereof, to be ſignified within the time herein after mentioned) converted into one joint ſtock of annuities; and that the intereſt or annuities ſhall be paid out of the produce of the ſinking fund, until redemption thereof by parliament, in manner herein after mentioned; and that the ſeveral duties and revenues which were given and granted for payment of the ſaid annuities, and on which the ſame were

charged

charged, ſhall be carried into and made part of the ſaid ſinking fund: and the commons being of opinion that it will be of advantage to the public, and alſo a great convenience to the proprietors of the ſaid annuities if the ſame were conſolidated into one joint-ſtock of annuities, &c. be it therefore enacted, &c. that after the 24th of *June*, 1752, and before the 5th of *January*, 1753, the ſeveral ſums aforementioned, amounting to 8,200,000*l.* carrying an intereſt after the rate of 3*l. per centum per annum*, ſhall be converted into one joint ſtock of annuities, transferrable at the Bank of *England*, in the ſame manner and form as the ſaid ſeveral and reſpective annuities are now transferred, until redemption thereof by parliament, in manner herein after mentioned.

154, Sect. 2. Every perſon who ſhall ſubſcribe or ſignify their conſent to their making the ſaid annuities part of the ſaid joint-ſtock of annuities, ſhall be immediately entitled to the privilege of transferring ſuch annuities as part of the ſaid joint-ſtock, from the ſaid 24th of *June*, 1752.

155. Sect. 3. The annuties ſhall be paid unto the 24th of *June*, 1752, out of the funds appropriated; but, in caſe they ſhall not be ſufficient for that purpoſe out of the ſinking fund.

156. Sect. 4. From and after the ſaid 24th of *June*, 1752, the ſaid ſum of 8,200,000*l.* and alſo the charges of management, ſhall be charged on the ſaid ſinking fund, and ſhall be iſſued and paid half yearly, on the 5th of *January* and 5th of *July*, every year: and the money ſhall be iſſued to the firſt, or chief caſhier, or caſhiers, of the governor and company of the Bank of *England*.

157. Sect. 5. The funds which were appropriated to the annuities are made part of the ſinking fund.

158. Sect. 6. Proprietors of the 3*l per cent.* annuities, granted by acts 9 and 11 *Geo.* II. may ſubſcribe into the joint ſtock.

159. Sect. 7. The proprietors of the 3*l. per cent.* annuities, granted by 8 *Geo.* I. in lieu of debentures,

to

to the ſufferers of *Nevis* and St. *Chriſtopher*'s, may ſubſcribe.

160. Sect. 8. The ſubſcribers may immediately transfer.

161. Sect. 9. The orders that ſhall be ſubſcribed ſhall be paid quartetly.

162. Sect. 10. The Bank ſhall provide books for the ſubſcriptions, which are to be open from the 24th of *June*, 1752, to the 25th of *January*, 1753, and no longer, except the Treaſury allow further time.

163. Sect. 11. Reciting that, in purſuance of 19 *Geo.* II. *cap.* 12. ſeveral perſons did advance and lend, upon the credit of the rates and duties therein mentioned, the principal ſum of 3,000,000 *l.* for the purchaſe of annuities transferrable at the Bank of *England*, and redeemable by parliament; which ſum of 3,000,000 *l.* is now reduced to the principal ſum of 2,824,428 *l.* 13 *s.* 11 *d.* attended with annuities after the rate of 3 *l. per cent.* purſuant to certain acts of parliament in that behalf: that, by another act, 20 *Geo.* II. *cap.* 3, ſeveral perſons did advance and lend upon the credit of the duties therein mentioned, the principal ſum of 4,000,000 *l.* for the purchaſe of annuities transferrable at the Bank of *England*, upon which (for the encouragement of perſons who ſhould advance and lend the ſame) there was an allowance of 10 *l. per cent.* ſo that the capital ſum amounted to the ſum of 4,400,000 *l.* redeemable by parliament; which ſum of 4,400,000 *l.* is now reduced to the principal ſum of 4,189,365 *l* 5 *s.* attended with annuities at 3 *l.* 10 *s.* purſuant to certain acts of parliament in that behalf: that, by another act of 20 *Geo.* II. *cap.* 10, ſeveral perſons did advance and lend upon the credit of the duties therein mentioned, the principal ſum of 1,000,000 *l.* for the purchaſe of annuities transferrable at the Bank of *England*, and redeemable by parliament; which ſum of 1,000,000 *l.* is now reduced to the principal ſum of 921,276 *l.* 10 *s.* 6 *d.* attended with annuities after the rate of 3 *l.* 10 *s. per cent.* purſuant to certain acts of parliament

of parliament in that behalf: that, by an act 21 *Geo.* II. *cap.* 2, ſeveral perſons did advance and lend the principal ſum of 6,300,000 *l.* for the purchaſe of annuities transferrable at the Bank of *England*; and for the encouragement of all perſons who ſhould advance and lend the ſame, there was an advance of 630,000*l.* being 10 *l. per cent.* on the ſaid ſum contributed; ſo that the whole capital ſum amounted to the ſum of 6,930,000 *l.* redeemable by parliament; which ſaid ſum of 6,930,000 *l.* is now reduced to the principal ſum of 6,660,006*l.* 18*s.* 3*d.* attended with annuities after the rate of 3 *l.* 10*s. per cent.* purſuant to certain acts of parliament in that behalf: that, by an act 22 *Geo.* II. *cap.* 23, certain perſons who were poſſeſſed of navy, victualling, and tranſport bills, and ordnance debentures, to the amount of 3,072,472 *l.* 0*s.* 10*d.* for annuities transferrable there, redeemable by parliament; which ſaid ſum of 3,072,472 *l.* 0*s.* 10*d.* is now reduced to the principal ſum of 2,968,496 *l.* 8*s.* 8*d.* attended with annuities after the rate of 3 *l.* 10*s. per cent.* purſuant to certain acts of parliament in that behalf: that the principal ſums before mentioned, now carrying an intereſt of 3 *l.* 10*s. per cent. per annum*, transferrable at the Bank of *England*, as aforeſaid, do amount in the whole to the ſum of 17,571,573 *l.* 16*s.* 4*d.* whereof the ſum of 14,857,955 *l.* 18*s.* 4*d.* was firſt ſubſcribed, in purſuance of 23 *Geo.* II. *cap.* 1, for an annuity of 3 *l.* 10*s. per cent.* until the 25th of *December*, 1757, which will be the 5th of *December*, 1758; and from and after the ſaid 25th of *December*, 1757. for annuities of 3 *per cent.* and the reſidue thereof, amounting to the ſum of 2,713,617 *l.* 18*s.* was laſt ſubſcribed, in purſuance of another act of the ſame ſeſſion of parliament, for an annuity of 3 *l.* 10*s. per cent.* until the 25th of *December*, 1755, which will be the 5th of *January*, 1756, and from and after the 25th of *December*, 1755, for annuities of 3 *l.* *per cent.* and whereas it is likewiſe thought neceſſary that the ſeveral principal ſums, amounting to the

ſum

ſum of 14,857,955*l.* 18*s.* 4*d.* ſhall be converted into one joint ſtock of annuities, the intereſt or annuity to be charged and chargeable upon the ſinking fund; and that the ſaid ſeveral principal ſums, amounting to the ſum of 2,713,617*l.* 18*s.* be, with the conſent of the proprietors thereof, converted into one other joint-ſtock of annuities, the intereſt or annuity to be charged upon the ſaid ſinking fund; and that from and after the 5th of *April*, 1758, the ſaid intended joint ſtock of 14,857,955*l.* 18*s.* 4*d.* together with the intended joint-ſtock of 2,713,617*l.* 18*s.* or ſo much thereof as ſhall be then unſatisfied, ſhall be one joint-ſtock of annuities, and that the ſeveral duties and revenues which were given and granted for the payment of the ſaid annuities, and on which the ſame were charged, ſhall be carried into and made part of the ſaid ſinking fund: be it therefore enacted, *&c.* that after the 10th of *October*, 1752, and before the 5th of *April*, 1753, the ſaid ſeveral annuities, amounting to 14,857,955*l.* 18*s.* 4*d.* may be conſolidated and made one joint-ſtock of annuities, transferrable at the Bank of *England*; and that the ſaid ſeveral annuities, amounting to 2,713,617*l*, 18*s.* may, after the ſaid 10th of *October*, 1752, and before the ſaid 5th of *April*, 1753, be conſolidated and made one other joint-ſtock of annuities, transferrable at the Bank of *England*, in the ſame manner as the ſaid ſeveral and reſpective annuities are now transferrable, until redemption thereof by parliament in manner after mentioned.

164. Sect. 12. The ſubſcribers may immediately transfer the annuities.

165. Sect. 13. The ſaid annuities are to be paid out of the funds appropriated thereto, till the 10th of *October*, 1752; and if they are deficient, then out of the ſinking fund.

166. Sect. 14. After the 10th of *October*, 1752, the ſaid ſeveral annuities are charged on the ſinking fund, and ſhall be iſſued and paid half-yearly.

167. Sect. 15.

167. Sect. 15. The proviſoes relating to the ſaid annuities ſhall remain in force.

168. Sect. 16. From and after the 10th of *October*, 1752, the funds appropriated to the ſaid annuities, ſhall be carried into and made part of the ſinking fund (after reſerving ſufficient to pay the annuities for lives at the Exchequer, and other charges and incumbrances charged on the ſaid duties and revenues) and the ſame ſhall be deemed and taken to be part of the ſaid ſinking fund, *&c.*

169. Sect. 17. The proprietors of Exchequer orders, payable out of the duties on plate by 6 *Geo.* I. *cap.* 11. are allowed to ſubſcribe the ſame.

170. Sect. 18. The ſubſcribers are impowered to transfer immediately.

171. Sect. 19. The ſaid duty on wrought plate ſhall be transferred unto and made part of the ſinking fund.

172. Sect. 20. The ſaid ſeveral annuities ſhall be one joint-ſtock transferrable at the Bank.

173. Sect. 24. Bank ſhall provide books for ſubſcriptions, which ſhall be open from the 10th of *October*, 1752, to the 5th of *April*, 1753. The proprietors may ſubſcribe, without fee or charge, in manner following; *viz.* ſuch of the ſaid annuities as were firſt ſubſcribed, ſhall be ſubſcribed into the joint-ſtock, amounting to 14,857,955*l.* 13*s.* 4*d.* and the laſt ſubſcribed into the joint-ſtock, amounting to the ſum of 2,713,617*l.* 18*s.*

174. Sect. 22. Executors, guardians, *&c.* may ſubſcribe.

175. Sect. 23. The tallies and orders to be delivered up to the accomptant-general of the Bank, and to be tranſmitted to the Exchequer to be cancelled.

176. Sect. 24. On one year's notice, to be printed in the *London Gazette*, and affixed upon the Royal Exchange, in *London*, and upon repayment by parliament, according to ſuch notice, of the ſaid ſeveral and reſpective ſums, or any part thereof, for which the

the ſaid ſeveral and reſpective annuities, or any of them, ſhall be payable, by payments not leſs than 500,000*l.* at one time; and upon full payment of all arrearages of the ſame annuities; then ſo much of the ſaid annuities as ſhall be attending on the ſaid principal ſums ſo paid off, ſhall ceaſe, determine, and be underſtood to be redeemed; and any vote of the Houſe of Commons, ſignified by the ſpeaker in writing, to be inſerted in the ſaid *London Gazette*, and affixed on the Royal Exchange in *London*, ſhall be deemed ſufficient notice.

Annuities.

Annuities.

1. *STAT. 4 *Will.* and *Mar.* cap. 3. ſect. 8. Upon the fund ariſing by certain duties of exciſe, upon beer, ale, and other liquors, granted to their majeſties, for 99 years, from the 25th of *January*, 1692, *(as in the beginning of this act)* any perſons natives or foreigners, may contribute towards the advancing the ſum of 1000,000 *l.* at any time before the firſt of *May*, 1693, ſuch ſums, and upon ſuch terms as are hereafter expreſſed, *viz.* that out of the monies ariſing by this act, the ſum of 100,000 *l.* yearly, till the 24th day of *June*, 1700, be kept apart as the yearly fund to be divided amongſt the perſons contributing; and after that day, 70,000 *l.* ſhall be yearly kept apart as the yearly fund, to be divided as herein after mentioned: That every contributor ſhall advance 100 *l.* at leaſt, for which he is to name his own, or ſome other life, during which he ſhall receive a ſhare of the ſaid fund, as is hereafter expreſſed; that every contributor may advance as many ſums of a 100 *l.* as he pleaſes, for which he is to name lives (ſo as no more lives be named than there are hundred pounds advanced) during which lives he ſhall receive ſo many ſhares of

* This act is intitled "An act for granting to their Majeſties, "certain rates and duties of exciſe upon beer, ale, and other li- "quors, for ſecuring certain recompences and advantages in the "ſaid act mentioned, to ſuch perſons as ſhall voluntarily advance "the ſum of ten hundred thouſand pounds, towards carrying on "the war againſt *France*." *The money advanced upon this act being deficient, is ſupplied by* 5 Will. *and* Mar. *cap.* 5. *See paragraph* 13.]

the ſaid fund, as he ſhall have advanced hundred pounds; that in the office of the auditor of the receipts, and of the clerk of the pells, there be kept books in which ſhall be entered the contributors names, and the ſums paid, and the time when, and the names of the nominees; to which the contributors, *&c.* may have reſort, without fee. Every contributor ſhall have a tally, and an order for payment, bearing date with the talley, ſigned by the commiſſioners of the Treaſury or three of them, or by the treaſurer of the Exchequer, which ſhall be valid, notwithſtanding the death or removal of the perſons ſigning the ſame, and ſhall be irrevocable. And the ſaid yearly funds of 100,000 *l.* and 70,000 *l.* (in caſe the whole ſum of 1,000,000 *l.* ſhall be advanced) ſhall be equally divided amongſt the contributors, during the lives of the nominees, in proportion to the ſums advanced yearly, by two half-yearly payments, *viz.* on the 24th day of *December*, and the 24th of *June*. And upon the death of every nominee, the ſhare, payable during his life, ſhall be divided among the contributors, whoſe nominees ſhall be living; and ſo from time to time the whole funds ſhall be divided among the contributors whoſe nominees ſurvive, till there be but ſeven nominees living; and then upon the death of every the ſaid ſeven nominees, a ſeventh part of the ſaid yearly funds ſhall be anſwered to their majeſties, their heirs, *&c.* and in caſe the whole ſum of 1,000,000 *l.* ſhall not before the firſt day of *May*, 1693, be advanced, then there ſhall be divided among ſuch as ſhall before that day have advanced, as aforeſaid, towards the ſame, yearly, ſo much of the ſaid funds, as ſhall bear proportion to the ſum advanced, *viz.* ſo much of the ſaid funds as ſhall, during the firſt ſeven years, to commence the 24th day of *June*, 1693, anſwer yearly the ſum of 10 *l.* for every 100 *l.* and after the ſaid ſeven years, during the lives of the ſaid nominees and the ſurvivor of them, the ſum of 7 *l.* for every 100 *l.* with like benefit of ſurvivorſhip.

2. Sect.

2. Sect. 10. Contributors may assign or devise shares of the said funds, during the lives of their nominees, and so, *toties quoties*; and no such assignments to be revocable, so as an entry may be made thereof in the office within two months after such assignment or death of the devisor, and upon producing such assignment, or will, or probate thereof, to be entered, the party shall bring an affidavit, taken before some person authorized to take affidavits in causes depending in any of the courts at *Westminster*, of the due execution of such assignment or will, which affidavit shall be filed.

3. Sect. 11. Guardians or trustees, having the disposal of the money of infants under twelve years, may for the use of such infants, pay 100*l.* of the infants money to the purposes aforesaid, and shall name the infant to be nominee, and such infant shall become a contributor.

4. Sect. 12. Contributors, upon demanding their half-yearly payment, unless the nominee appear in person, shall produce a certificate of his life, signed by the minister and church-wardens of the parish where he lives, on the day when the said half-yearly payment becomes due, if such nominee be within the realm, which certificate shall be made without fee, and filed in the office of receipt.

5. Sect. 13. And if any nominee shall, at time of such demand, be in *Scotland*, or beyond-sea, and one of the barons of the Exchequer shall certify, that upon proof to him made, it seems probable that the nominee is living (such certificate and examination to be without fee) the said certificate being filed, shall be sufficient warrant for the payment of the said half-yearly share to the contributors.

6. Sect. 14. If any, intitled to receive any half-yearly payment, shall not demand the same till within twenty days, that the next half-yearly payment becomes due, such half-yearly payment shall be divided amongst the rest of the contributors; but the

following half-yearly payments ſhall be ſaved to him, if demanded in due time.

7. Sect. 15. In the office of the auditor of the receipt, every half-year before the reſpective days of payment, there ſhall be made up an account of nominees whoſe deaths are known, and of the contributors, who have made default in making demand, that the reſt may have the advantage thereof.

8. Sect. 16. If any perſon ſhall receive any half yearly payments after the death of his nominee, any contributor may require the ſame to be repaid into the Exchequer, for the benefit of the reſt. And in caſe of neglect, to pay the ſame within a month after ſuch demand, the perſon neglecting ſhall forfeit treble the ſum received; to be recovered by action of debt, in the name of ſuch contributor who ſhall make the demand.

9. Sect. 17. All things directed by this act to be performed in the Exchequer, ſhall be done without fee; and if any officer demand any fee, or miſ-apply any of the ſaid weekly ſums, or ſhall not keep books, and make entries, and perform other things, which they are required to perform, they ſhall forfeit their offices, and be incapable of any place of truſt, and pay treble damages, with coſts, to every contributor, to be recovered by action of debt, *&c.* one third part of the ſum recovered to be paid into the Exchequer, for the benefit of the contributors, and two thirds to be paid to the uſe of the proſecutor; and in caſe of colluſion, any other contributor may bring another action. If any officer make payment of any ſhare, upon ſuch certificate, as here directed, he ſhall incur no penalty, tho' the certificate be falſe, or the nominee dead, unleſs ſuch officer knew it.

10. Sect. 18. Contributors, within a month after notice of the death of their nominees, ſhall certify the ſame to the auditor of the receipt, and within three months after ſuch notice, ſhall deliver up their tallies and orders, if they be in their hands and power;

power; and in default thereof, ſhall forfeit 10 *l.* to the uſe of any perſon who ſhall ſue for the ſame.

11. Sect. 22. If the whole ſum of 1,000,000*l.* be not advanced before the ſaid 1ſt day of *May*, any perſons after that day and before the 29th day of *September* following, may advance any ſums not exceeding in the whole, with what ſhall have been advanced before the ſaid firſt day of *May*, the ſum of 1,000,000*l.* upon the terms following, *viz.* that every ſuch perſon, out of the duties ariſing by this act, ſhall have for every 100*l.* a yearly annuity of 14*l.* for his own, or any other life to be by him nominated, within ſix days after payment, which annuities ſhall be paid at the four moſt uſual feaſts in the year, and the perſons paying ſuch ſums, ſhall have tallies importing the receipt thereof, and orders for payment, *&c.* as aforeſaid. And the monies ariſing by the duties hereby granted (beſides ſo much as ſhall bear proportion to the ſum which ſhall be advanced before the 1ſt day of *May*, 1693) ſhall be appropriated to the payment of the ſaid annuities, under the penalties before appointed, *&c.*

12. Sect. 26. No monies lent or payable by virtue of this act ſhall be charged with any impoſitions.

13. Stat. 5 *Will.* and *Mar. cap.* 5. ſect. 1. To ſupply the deficiency of the million act, for annuities of 10*l. per cent.* for a certain term, and then 7*l. per cent.* on ſurvivorſhip, and 14*l. per cent.* on a ſingle life granted 4 *Will.* and *Mar. cap.* 3.

14. Sect. 2. Any perſons, *&c.* may contribute towards the advancing the ſum of 118,506*l.* 5*s.* 10*d.* to make up the ſum of 1,000,000 *l.* intended to be advanced, by paying into the Exchequer, before the firſt day of *May*, 1694, any ſums not exceeding in the whole 118,506 *l.* 5*s.* 10*d.* as followeth, *viz.* that every perſon, out of the exciſe granted by the ſaid act, ſhall have for every 100 *l.* by them advanced, an annuity of 14 *l.* during the life of ſuch perſon, or during any other life to be nominated by him within ſix days after payment; which annuities ſhall

be paid at the four uſual feaſts; and ſhall have tallies, and orders, *&c.* as in the ſaid act, and all the duties by the ſaid act granted, beſides ſo much as ſhall bear proportion to the ſum of 881,493 *l.* 14 *s.* 2 *d.* already advanced, ſhall be appropriated for the payment of the ſaid annuities of 14 *l. per cent.* under the like penalties, *&c.* as in the ſaid act.

15, Sect. 3. Monies payable by virtue of this act ſhall not be chargeable with impoſitions.

16. Sect. 4. Every contributor upon this or the former act, upon demanding payment of their ſhares (unleſs the nominee appear in perſon) ſhall produce a certificate of the life of his nominee ſigned by the miniſter and churchwardens, as by the ſaid act; or it ſhall be lawful for every contributor, at his election to make oath of the truth of his nominee's life, on the day when the payment ſhall become due, before any juſtice of the peace of the county, *&c.* wherein ſuch perſon ſhall reſide; and the ſaid juſtice ſhall make a certificate thereof, without fee, which ſhall be filed: and if any perſon ſhall be guilty of a falſe oath, or forging any certificate touching the premiſſes, he ſhall incur the pains and penalties of wilful perjury or forgery, and in caſe any nominee ſhall be reſident in *Scotland*, or beyond the Seas, and any of the barons of the Exchequer ſhall certify, that upon proof to him made, it doth ſeem probable that the nominee is living; the ſaid certificate being filed, ſhall be a ſufficient warrant for making the ſaid payment; and if any perſon ſhall receive payment upon his annuity, for any time beyond the death of his nominee, when the ſame ought to ceaſe, ſuch perſon ſhall forfeit treble the value of the monies ſo received; one half to their majeſties, and the other half to them that will ſue for the ſame.

17. Sect. 7. The ſurplus of the monies ariſing by the ſaid duties ſhall not be charged with any grant or penſion.

18. Stat. 5 and 6 *Will.* and *Mar. cap.* 20. ſect. 34. Any perſons may contribute towards advancing 300,000 *l.*

300,000 *l.* by paying into the receipt of the Exchequer, before the 29th of *September*, 1694, any ſums not exceeding the ſum of 300,000 *l.* upon the terms following; every ſuch perſon out of duties granted by this act, ſhall have for every ſum of 100 *l.* ſo advanced, ſuch annuity as herein after is directed; if ſuch contributor ſhall pay his money upon one life, he ſhall have an annuity of 14 *l.* for every 100 *l.* if upon two lives, then of 12 *l.* if upon three lives, then of 10 *l.* the lives to be nominated by the contributors, or ſuch as ſhall be employed by them to pay in the ſaid ſums within thirty days, after the 29th of *September*, 1694, which annuities ſhall be paid quarterly at the four uſual feaſts; and every perſon, on payment of ſuch ſums ſhall have tallies and orders, *&c.* as by an act, 4 *Will.* and *Mar. cap.* 3. and the duties by this act granted are appropriated for payment of the ſaid annuities, under the like penalties, *&c.* as in the ſaid act.

19. Sect. 37. Every contributor, upon demanding payment, unleſs the nominee appear in perſon, ſhall produce a certificate of the life of his nominee, ſigned by the miniſter and church-wardens of the pariſh, *&c.* or make oath of the life of his nominee, *&c.* as before. See parag. 16.

20. Stat. 6 and 7 *Will.* III. *cap.* 5. ſect. 3. Part of the contributors upon the three abovementioned acts, being intitled to annuities for ſing'e lives, with reſpect to 981,619 *l.* 1 *s.* 9 *d.* part of the 1,300,000 *l.* given by thoſe acts upon life annuities.

21. Sect. 5. Any perſon, *&c.* being intitled to an eſtate for one life, in any annuity obtained upon the acts of 4 and 5 *Will.* and *Mar. cap.* 3. and 5 and 6 *Will.* and *Mar. cap.* 5. and *cap.* 20. at the rate of 100 *l.* for 14 *l. per annum*, before the 24 of *July*, 1695. [*Enlarged to the 24th of June*, 1696. *by Stat.* 7 Will. III. cap. 2. ſect. 4.] may pay into the Exchequer ſo much money, as ſuch annuity, being computed at four years and a half, doth amount to, *viz.* for every annuity of 14 *l. per annum*, for a ſingle life, 63 *l.*

more for changing the ſame into a certain term, for 96 years, or for a further intereſt to take effect after the eſtate for life, and ſo proportionably for larger annuities; and every ſuch perſon ſhall have tallies, upon which ſhall be written for what the ſaid payment was made; and thereupon the party making ſuch payment ſhall be entitled to an annuity equal to the annuity he had before for one life, for the term of 96 years from the 25th of *January*, 1695, payable out of the funds in the ſaid acts mentioned; and in ſuch caſes, the ſaid eſtates for life ſhall be merged in the ſaid term of years; but where the tallies ſhall import the conſideration-money to be paid for a future intereſt, to take effect after the determination of the eſtate for life, there it is to be underſtood, that the preſent eſtate for life is continued.

22. Sect. 6. If any perſon who hath ſuch preſent annuity for one life, ſhall not, before the ſaid 24th of *July*, 1695, pay into the Exchequer ſuch conſideration money for changing his eſtate, or for a further intereſt, as aforeſaid, then any other perſon, *&c.* may, after the 24th of *June*, until the 12th of *November*, 1695 (*enlarged to the 29th of* September, 1696, *by ſtat.* 7 Will. *III.* cap. 2. *ſect.* 5.) advance ſo much money, as ſuch annuity, computed at five years, ſhall amount to, *viz.* for every annuity of 14*l. per annum*, 70*l.* for the term of 96 years, as aforeſaid; and ſuch perſon ſhall have tallies, and be entitled to ſuch eſtate, as aforeſaid, after the expiration of the particular eſtate for life, during the reſidue, which ſhall be then to come of the ſaid term of 96 years, *&c.*

23. Sect. 7. After the ſtriking of the tallies, orders, according to the courſe of the Exchequer, ſhall be drawn and ſigned for the payments which by this act are to be made: which orders are to be aſſignable as appointed by the aforeſaid acts; and the ſame duties ſhall be appropriated to the payment of the ſaid annuities under the like penalties, *&c.* as by the ſame act 4 and 5 *Will.* and *Mar. cap.* 3; and the

officers

officers concerned are to obſerve the directions of the ſaid act, under the penalties there enacted.

24. Sect. 8. No monies payable for annuities by this act ſhall be chargeable with any tax.

25. Sect. 10. If any perſon ſhall fraudulently contribute any ſum upon a life pretended to be then in being, but really dead, the ſum ſo advanced ſhall be forfeited, and ſuch contributor ſhall, for every ſuch offence, forfeit alſo 100*l.* one moiety thereof to the king, and the other to him who ſhall diſcover ſuch offence, and ſue for the ſaid ſum, *&c.*

26. Sect. 11. When any eſtates for ſingle lives ſhall be changed into certain terms of years, and be thereby merged, the orders which were made for ſuch annuities during ſuch ſingle lives, ſhall be brought into the Receipt of the Exchequer, and there remain as vouchers for the payments already made; and it ſhall not be neceſſary for ſuch who ſhall for the future receive annuities for a term of years, to produce a certificate of a nominee's being alive.

27. Stat. 9 *Will.* III. *cap.* 5. ſect. 1. For diſcharging 255,663*l.* 5*s.* 8*d.* remaining unpaid, upon the above annuities, which, between the 17th of *May*, 1696, and the 17th of *May*, 1697, became due, and ought to have been paid out of five ſeventh parts of the late duties on tonnage, and two ſeventh parts of the ſame duties; as alſo out of certain duties upon ſalt. Any perſons having one eſtate for life in any annuity, purchaſed at the rate of 100*l.* for every 14*l.* *per annum* upon the ſeveral acts mentioned in the act of 6 and 7 *Will.* III. *cap.* 5, may, before the 25th of *March*, 1698, pay into the Exchequer, for every ſuch annuity of 14*l.* computed at four years, *viz.* 56*l.* more, for converting ſuch ſingle life into a certain term, for the reſidue of 96 years from the 25th of *January*, 1695, or for a further intereſt for the reſidue of the ſaid term of 96 years after the ſaid eſtate for life.

28. Sect. 2. If any perſon, intitled to ſuch preſent annuity, ſhall not, before the ſaid 25th of *March*,

March, 1698, pay for changing ſuch eſtate for life into a term certain, or for a future intereſt, as aforeſaid; then any other perſon, after the ſaid 25th of *March*, and before the 10th of *April*, 1698, may purchaſe an intereſt for the then reſidue of the ſaid term of 96 years, as aforeſaid, ſubject to the preſent eſtate for life, for the like ſum of 56*l.* and the perſons paying the ſaid conſideration, ſhall be entitled to ſuch annuity, chargeable upon the reſpective funds in the former act mentioned.

29. Sect. 4. The directions in the former act 6 and 7 *Will.* III. *cap.* 5, for levying tallies, *&c.* or applying the monies ariſing by the ſaid funds, are revived in reſpect of ſuch annuities as ſhall be purchaſed upon this act.

30. Sect. 6. No officer appointed to pay the annuities out of the duties of exciſe upon the act made 4 and 5 *Will.* and *Mar.* *cap.* 3, and upon the ſubſequent acts, without ſurvivorſhip, ſhall pay off any quarterly payment of the ſaid annuities till the precedent quarter be fully paid, or the money ready in the office for payment thereof; whereof public notice to be given and hung up in the office: and every officer offending herein ſhall forfeit his office, and 50*l.* for every ſuch offence, to the perſon who ſhall ſue for the ſame.

31. Stat. 9 and 10 *Will.* III. *cap.* 24. ſect. 1. All perſons having or not having any eſtate for one life for an annuity, purchaſed at the rate of 100*l.* for 14*l.* *per annum*, upon the ſeveral acts mentioned in the act of 6 and 7 *Will.* III. *cap.* 5, may, before the 1ſt of *December*, 1698, paying into the Exchequer 56*l.* for every ſuch annuity of 14*l.* convert the ſaid eſtate for life into a certain term, for the reſidue of 96 years then to come, from the 25th of *January*, 1695, or have an intereſt in ſuch annuity for the ſaid term, to take effect after the ſaid eſtate for life, and ſubject to the preſent eſtate for life, and in the ſame proportion for larger annuities, and the perſon paying the ſaid conſideration money, ſhall be entitled to ſuch

annuities,

annuities, charged upon the reſpective fund in the ſaid former act mentioned.

32. Sect. 2. All the clauſes in the ſaid former act relating to the ſaid annuities, are revived, in reſpect of ſuch annuities, as ſhall be purchaſed upon this act.

33. Stat. 11 and 12 *Will.* III. *cap.* 3. ſect. 7. All perſons having or not having an eſtate for life in any annuity of 14 *l. per annum*, purchaſed for 100 *l.* upon the acts mentioned in the act of 6 and 7 *Will.* III. *cap.* 5, for converting the ſaid life into a term certain of 96 years, from the 25th of *January*, 1695, may, before the 2d of *November*, 1700, advance the ſum of 70 *l.* or five years purchaſe of ſuch annuity, for converting the ſaid life into a term certain, or for a future intereſt, for the reſidue of the ſaid 96 years, to take effect after the ſaid eſtate for life as in the former acts.

34. Sect. 11. Where any of the ſaid annuities for life (whereof the reverſions are purchaſed) are not demanded at the Exchequer within two years after they are due; and where certificates of the lives of the nominees are not produced, nor due proofs made thereof, ſuch nominees ſhall be taken to be dead, and the purchaſers of the reverſions ſhall receive the annuities till ſuch certificate be procured, or proof made, and ſhall not be accountable for ſuch annuities received during ſuch default.

35. Stat. 1 *Ann.* ſtat. 2. *cap.* 5. ſect. 1. Several annuities for lives purchaſed upon ſtat. 4 *Will.* and *Mar. cap.* 3, and whereupon no further intereſt hath been purchaſed, being determined, amounting to 5,277 *l. per annum*, and other ſuch annuities, upon ſtat. 1 *Will.* and *Mar. cap.* 20, being alſo determined, amounting to 565 *l. per annum*, any natural born ſubjects, before the 1ſt of *March*, 1702, may contribute to the payment of 79,155 *l.* for purchaſing of annuities out of the exciſe impoſed by 4 *Will.* and *Mar. cap.* 3; and of 8,475 *l.* for purchaſing annuities out

of

of the two ſeventh parts of the exciſe granted *per* 5 *Will.* and *Mar. cap.* 20; and they ſhall have a yearly rent of 14*l.* for every 210*l.* ſo paid for the term of 89 years from the 25th of *January*, 1702, payable at the four uſual feaſts.

36. Sect. 2. Every contributor ſhall enjoy the yearly rent purchaſed tax-free, and as beneficially as purchaſers of annuities for life, or reverſionary annuities upon the ſaid acts, enjoy the ſame, and the clauſes in the ſaid acts, in relation to the annuities, other than making proof of the nominees being alive, ſhall be practiſed as to annuities upon this act.

37. Sect. 3. In caſe the duty granted for 99 years, or the ſaid two ſeventh parts, ſhall be deficient in any one year to ſatisfy all the ſaid annuities, the deficiencies ſhall be made good by parliament.

38. Stat. 2 *Ann. cap.* 3. ſect. 3. The weekly ſum of 5,700*l.* ariſing by the hereditary exciſe, payable in the Exchequer, *per* 12 *Will.* III. *cap.* 12, and by 1 *Ann. cap.* 7, ſhall be paid into the Exchequer ſeparately, weekly.

39. Sect. 5. Commiſſioners neglecting to pay the ſame, ſhall forfeit their places, and be incapable to ſerve the queen, and be liable to pay double the money miſapplied to ſuch as will ſue for the ſame.

40. Sect. 6. The comptroller of the exciſe ſhall keep a diſtinct account of all money ariſing by the branches of exciſe, out of which the ſaid weekly payments are to be made, to which all concerned ſhall have acceſs without fee under penalty of forfeiture of office, and being incapable, as aforeſaid, and forfeiture of 200*l.*

41. Sect. 7. The auditor of the receipts ſhall enter the ſaid monies apart.

42. Sect. 8. Out of all the monies ariſing by the ſaid weekly payments, the annuities to be purchaſed by this act ſhall be paid, and the reſidue of the money ariſing by the ſaid weekly payments of 3,700*l.* ſhall be applied for the public ſervice.

43. Sect. 9.

43. Sect. 9. Any perſons, for raiſing 1,018,867*l.* 18*s.* 6*d.* *viz.* 900,000*l.* for carrying on the war, *&c*, and 118,867*l.* 18*s.* 6*d.* for making good the quarterly payments after mentioned, may pay money into the Exchequer for purchaſing annnities for 99 years, from the 25th of *March*, 1704, at the rate of 150*l.* for 10*l.* *per annum*, and ſo proportionably; the conſideration money to be paid before the 29th of *September*, 1704, the purchaſed annuities to be paid at the uſual feaſts; the firſt year and three quarters to be ſatisfied out of the monies to be advanced, and the reſt out of the ſaid weekly payments.

44. Sect. 10. Any perſons, for raiſing a farther ſum of 300,000*l.* for carrying on the war, *&c.* may pay money into the Exchequer for purchaſing any annuity for one life at the rate of 9 years purchaſe; for two lives at eleven years, and three lives at twelve years purchaſe; or for the term of 99 years at 15 years purchaſe.

45. Sect. 11. The annuities aforeſaid ſhall commence from the 25th of *March*, and be paid at the feaſt of St. *John* the Baptiſt, 1704, and other uſual feaſts.

46. Sect. 13. When the contributions ſhall amount to 1,200,000*l.* for carrying on the war, *&c.* and ſo much more as ſhall be neceſſary to diſcharge the annuities until the 25th of *December*, 1705, incluſive, then no further purchaſe of annuities ſhall be on this act.

47. Sect. 14. The contributors ſhall name to the auditor of the receipt, and clerk of the pells, the lives during which ſuch contributor ſhall be intitled to ſuch annuity, on or before the 1ſt of *May*, 1704.

48. Sect. 16. The contributor's names, *&c.* ſhall be entered in the offices of the clerks of the pells and auditor of the receipt, in books to be inſpected without fee.

49. Sect. 17. The annuities ſhall be free from taxes.

50. Sect. 18.

50. Sect. 18. Upon payment of the conſideration money, every contributor ſhall have tallies, and or-orders for payment of ſuch annuities *as in paragraph* 1.

51. Sect. 20. Contributors may, by writing, under hand and ſeal, aſſign, and by will in writing deviſe, the ſaid annuities, or any part thereof, or intereſt therein; a memorandum of ſuch aſſignment or will to be entered in the office of the auditor of the receipt, in two months after the aſſignment or death of the deviſor; the perſon producing the ſaid aſſignment, will, or probate thereof, to be entered, bringing an affidavit taken before perſons authorized to take affidavits in cauſes in any court at *Weſtminſter*, of the due execution thereof; the affidavits to be filed in the ſaid office.

52. Sect. 21. The ſaid annuities ſhall be deemed perſonal eſtates, and go to executors and adminiſtrators.

53. Sect. 23. Contributors for lives, unleſs the nominee appear in perſon, ſhall produce a certificate of the life of the nominee, or make oath of the nominee's life before a juſtice of the county, *&c. as in paragraph* 16.

54, Sect. 25. If any perſon receive any quarterly payment after the death of the nominee, he ſhall repay the ſame; and if it were received by forging certificate, or perſonating nominee, the perſon fraudulently getting the money, and perſonating, to forfeit treble; to be recovered by any perſon who will ſue, *&c.* and to be proſecuted according to law.

55. Sect. 26. If any officer of the Exchequer demand fee for things directed hereby to be done in the Exchequer, or miſapply any of the ſaid weekly ſums, *&c.* or do not other things required by this act, he ſhall forfeit his office, be incapable of any place of truſt, and pay treble damages and coſts to the perſon prejudiced; one third of the damages to be to her majeſty, and, in caſe of colluſion between the

plaintiff

plaintiff and defendant, any other contributor may bring an action.

56. Sect. 27. No officer shall incur any penalty, *&c.* unless he know of such forgery or death.

57. Sect. 28. Contributors for life shall certify the death of their nominees, in one month after notice, to the auditor of receipt, and in three months after such notice shall deliver to him the tallies and orders in their power; or, in default, the contributors, *&c.* shall forfeit 10*l.*

58. Sect. 32. The lord treasurer, or commissioners, may reward clerks and officers for their pains.

59. Stat. 3 *Ann. cap.* 2. sect. 1. Natives or foreigners may pay into the Exchequer 877,930*l.* 19*s.* 3*d.* halfpenny, *viz.* 690,000*l.* part thereof for purchasing annuities to be paid during the term of 99 years, from the 25th of *December*, 1705, at the rate of 150*l.* for 10*l.* *per annum*; the purchase money to be paid before the 29th of *December*, 1705; the annuities not to exceed, in the whole, 46,000*l.* *per annum*, and to be payable at the four most usual feasts.

60. Sect. 3. For raising a further sum not exceeding 187,930*l.* 19*s.* 3*d.* halfpenny, residue of the said 877,930*l.* 19*s.* 3*d.* halfpenny, it shall be lawful to persons, entitled to one life in being, on the act of 2 *Ann. cap.* 3, to pay into the Exchequer six years purchase, to persons entitled to two lives in being, to pay four years purchase; to persons entitled to three lives in being, to pay three years purchase, either for changing such annuity into a term for 99 years, to be computed from the 25th of *March*, 1704, or for the annuity to be paid after the determination of such one, two, or three lives, for the said 99 years; the purchase-money to be paid on or before the 29th of *September*, 1705.

61. Sect. 4. If persons entitled to such present annuity, pay not one third part of the purchase-money before the last day of *March*, 1705, for such change or future interest, then any person, having or

not

not having any intereſt in ſuch eſtate for life or lives, may pay ſuch rates and purchaſe-money for the purchaſe of ſuch annuities, by equal three parts, on or before the 29th of *September*, 1705.

62. Sect. 5. In the office of auditor and clerk of the pells, books ſhall be kept in which the names of contributors, &c. ſhall be entered, which books the contributors may inſpect without fee.

63. Sect. 6. The annuities ſhall be paid out of the overplus ariſing by the weekly payments of 3,700 *l.* exciſe-money (mentioned in 2 *Ann. cap.* 3.) after the payments therein mentioned.

64. Sect. 7. Purchaſers ſhall enjoy the annuities free from taxes.

65. Sect. 8. Purchaſers, upon payment of purchaſe-money, ſhall have tallies and orders, *as in paragraph* 1.

66. Sect. 10. Purchaſers of theſe annuities may aſſign the ſame, *as in paragraph* 1.

67. Sect. 12. If the officers of the Exchequer ſhall demand any fee, &c. or ſhall miſapply the ſaid weekly ſum, &c. or pay the ſame otherwiſe than is directed, &c. they ſhall forfeit as in paragraph 55.

68. Sect. 15. The commiſſioners of the Treaſury may reward the clerks and officers, &c.

69. Stat. 4 *Ann. cap.* 6. ſect. 17. The monies ariſing by this act, *viz.* the one third ſubſidy of tonnage and poundage, from the 8th of *March*, 1706, for 98 years; the duty on coals from the 14th of *May*, 1708, to the 30th of *September*, 1710; and an exciſe from the 17th of *May*, 1713, for 95 years; and the duties ariſing by ſtat. 5 and 6 *Will.* and *Mar. cap.* 7, (after the lottery annuities therein mentiond are paid) ſhall be paid into the receipt of the Exchequer weekly, &c. under the penalties in 9 *Will.* III. *cap.* 44; and, with the ſum of 200.000 *l.* part of the contribution-money (to be reſerved as after-mentioned) ſhall be the fund for payment of the annuities upon this act.

70. Sect. 21.

70. Sect. 21. For raiſing 2,855,761 *l.* 16 *s.* 2 *d.* *viz.* 2,575,761 *l.* 16 *s.* 2 *d.* for carrying on the war, and other her majeſty's preſent occaſions, and 280,000 *l.* reſidue, to be applied, with the ſubſidies of tonnage and poundage hereby granted, for making good the quarterly payments after mentioned, to grow due before the 25th of *March*, 1708, any perſons may pay ſums not exceeding 2,855,761 *l.* 16 *s.* 2 *d.* for purchaſing annuities for 99 years, from the 25th of *March*, 1706, at the rate of fifteen years and a half's purchaſe, amounting to 155 *l.* for 10 *l.* *per annum*, the conſideration-money to be paid before the 1ſt of *November*, 1706, the annuities not to exceed 184,242 *l.* 14 *s.* *per annum*, payable at the four moſt uſual feaſts.

71. Sect. 22. In the offices of the auditor of the receipt and clerk of the pells, there ſhall be kept books, in which ſhall be entered the names of the contributors, *&c.* to which the contributors ſhall reſort without fee.

72. Sect. 24. If there ſhall be an overplus of the ſaid duties for the firſt two years; or if, at the end of any ſubſequent year there ſhall be an overplus, ſuch overplus ſhall be diſpoſable by parliament.

73. Sect. 25. Contributors ſhall enjoy the annuities free from taxes, *&c.*

74. Sect. 26. And ſhall have tallies and orders, *&c.*

75. Sect. 28. Contributors, by writing under hand and ſeal, or by will in writing, may aſſign or deviſe the ſame annuities, as in paragraph 55.

76. Sect. 30. Officer of Exchequer demanding fee, *&c.* ſhall forfeit as in paragraph 51.

77. Stat. 5 *Ann. cap.* 19. ſect. 1. The duties upon low wines, continued until the 24th of *June*, 1710, *per* 3 *Ann. cap.* 4, and the duties to be paid by every hawker, pedlar, *&c.* *per* 9 *Will.* III. *cap.* 27, continued till 24th *June*, 1710, *per* 3 *Ann. cap.* 4, aforeſaid, ſhall be continued from 23d *June*, 1710, for 96 years, and be raiſed by ſuch rules, and under ſuch penalties, *&c.* as by any act or law in force is preſcribed.

78. Sect. 3. The duties upon vellum, parchment, and paper, granted to king *William* and queen *Mary*, *per* 5 and 6 *Will.* and *Mar. cap.* 21; and *per* 8 *Will.* III. *cap.* 20. continued till the 1ſt of *Auguſt*, 1706; and *per* 1 *Ann. cap.* 13. continued to the 1ſt of *Auguſt*, 1710, ſhall be continued from thence for the term of 96 years; and the act for granting the ſaid duties; and all clauſes therein, or any other act, *&c.* concerning the ſaid duties upon vellum, *&c.* ſhall be practiſed.

79. Sect. 7. The monies ariſing by the duties by this act granted and continued (the charge of raiſing the duties excepted) ſhall be paid into the Exchequer ſeparate from other monies; and after the monies charged on vellum, *&c.* by the act 1 *Ann. cap.* 13, ſhall be ſatisfied; then the duties on vellum, *&c.* ſhall be paid into the Exchequer apart weekly; *viz.* on *Wedneſday*, if not an holyday, *&c.*

80. Sect. 8. The additional ſubſidies of tonnage and poundage, and other duties *(called the one third ſubſidy)* by 4 *Ann. cap.* 6, continued upon all wines and other goods imported, from the 8th of *March*, 1706, for 98 years, ſhall be continued for one year after the ſaid 98 years, and ſhall be raiſed by the rules, and under the ſame penalties, *&c.* as by the act, 4 *Ann. cap.* 6.

81. Sect. 9. The lord-treaſurer ſhall, during the continuance of the ſubſidies, *&c.* ſettled by the ſaid act, 4 *Ann. cap.* 6, cauſe the overplus thereof to be computed at the feaſt of the Anunciation every year, or ſix days after; and after reſerving ſufficient for the annuities grown due before ſuch feaſt, the overplus ſhall be applied to the payments of the annuities to be purchaſed on this act.

82. Sect. 10. 35,000 *l.* part of the money to be raiſed by ſale of annuities on this act, ſhall be applied for ſecuring the quarterly payments which ſhall grow due before *Michaelmas*, 1710.

83. Sect. 11. The commiſſioners of the Treaſury ſhall cauſe the overplus monies of the ſeveral duties and funds charged with the annuities formerly purchaſed;

chaſed; *viz.* the exciſe granted by an act 4 *Will.* and *Mar. cap.* 3, liable to annuities with ſurvivorſhip, *&c.* the overplus to be computed the 24th of *June* yearly: the exciſe granted 5 *Will.* and *Mar. cap.* 20, the overplus whereof is computed, *viz.* as to five ſevenths (appropriated to make good the fund of the Bank of *England)* on the 1ſt of *June* yearly; the other two ſevenths being for the payment of other annuities on the 25th of *March* yearly: the exciſe granted by another act of 5 *Will.* and *Mar. cap.* 7, for 16 years, for payment of lottery annuities; the overplus to be computed on the 25th of *March* yearly. The particular ſalt and ſtamp duties granted 9 *Will.* III. *cap.* 25, ſect. 40, charged with annuities of 160,000 *l. per annum*, to the *Eaſt-India* company, the overplus whereof is computed on the 29th of *September* yearly, to be computed at the reſpective times before mentioned; and the overplus monies between the 24th of *March*, 1706, and the 30th of *September*, 1710, ſhall be applied to make good the quarterly payments of annuities to be purchaſed on this act, growing due before *Michaelmas*, 1710.

84. Sect. 12. There ſhall be kept in the office of the auditor of the receipt, books in which the duties hereby to be paid weekly, *&c.* and the overplus of the annuity funds ſhall be entred apart.

85. Sect. 13. Commiſſioners, and other officers for raiſing the duties for payment of annuities to be purchaſed by this act, ſhall be appointed, and the commiſſioners ſhall weekly compute the monies of each branch; and all commiſſioners, and other officers concerned in managing thereof, ſhall do their duties under the penalties preſcribed *per* 9 *Will.* III. *cap.* 44, for the like offence as to ſalt and ſtamp duties.

86. Sect. 14. The monies ariſing from the duties on low wines, hawkers, and pedlars, and the ſtamps, hereby appointed to be paid weekly into the Exchequer, the additional ſubſidy, and ſum not exceeding

35,000 *l.* and the overplus of the ſaid former annuity funds, ſhall be the general fund for payment of annuities to be purchaſed on this act.

87. Sect. 15. Natives or foreigners may pay into the Exchequer ſums not exceeding 1,155,000 *l.* for purchaſing annuities payable for 99 years, from the 25th of *March*, 1707, at the rate of 16 years purchaſe; *viz.* 160 *l.* for every annuity of 10 *l. per annum*; the conſideration-money to be paid on or before the 10th of *November*, 1707; all the ſaid annuities not to exceed 72,187 *l.* 10 *s. per annum*, and to be payable at the four moſt uſual feaſt days.

88. Sect. 16. In the offices of the auditor of the receipt and clerk of the pells, books ſhall be kept, in which ſhall be entered the names of the contributors, *&c.* which books the contributors, *&c.* may inſpect without fee.

89. Sect. 17. The annuities ſhall be payable, with preference to all other payments, out of the monies ariſing by this act.

90. Sect. 18. If at the end of any year the monies ariſing within ſuch year ſhall exceed the monies due upon the annuities and arrearages thereof, the ſurplus ſhall be diſpoſable for the public ſervice.

91. Sect. 19. The contributors ſhall enjoy their annuities tax-free.

92. Sect. 20. The contributors ſhall have tallies and orders, *&c.* as in paragraph 1.

93. Sect. 22. The contributors, by writing under hand and ſeal, or by their laſt wills in writing, may aſſign ſuch annuities, *as in paragraph* 51.

94. Sect. 23. If officers of the Exchequer ſhall demand any fee, *&c.* for any thing to be done by the direction of this act, or miſapply any the duties or monies hereby appropriated, or do not the other things required by this act, they ſhall forfeit, as in paragraph 55.

95. Stat. 6 *Ann. cap.* 5. ſect 1. For the raiſing the ſum of 640,000 *l. viz.* 540,000 *l.* for a ſupply to

to her majeſty, and 100,000 *l.* to make good the payment of annuities to be purchaſed on this act; from the 25th of *March*, 1708: during 99 years, the ſum of 40,000 *l. per annum*, ſhall be appropriated to the payment of the annuities to be purchaſed on this act.

96. Sect. 2. The ſaid 40,000 *l. per annum*, ſhall be payable out of the overplus monies of the duties and funds ſettled for payment of the ſeveral annuities granted (by 4 *Ann. cap.* 6. *See before*, *Paragraph* 69, and by 5 *Ann. cap.* 19. *See before*, *paragraph* 77) which ſhall remain after ſatisfaction of the ſaid annuities; and out of what ſhall remain of the overplus monies ariſing after the 30th of *September*, 1710, for the duties of exciſe, granted 4 *Will.* and *Mar. cap.* 3, for the term of 99 years, charged with the payment of ſeveral annuities with benefit of ſurvivorſhip and other annuities; which overplus is comprehended in the temporary proviſions made by 5 *Ann. cap.* 19; and the commiſſioners of the Treaſury ſhall cauſe the duties and funds in the acts of 4 *Ann. cap.* 6, and 5 *Ann. cap.* 19, to be computed on *Lady-day*, or ſix days after, yearly; and the exciſe granted 4 *Will.* and *Mar. cap.* 3, to be computed the 24th of *June* yearly, and the overplus to be applied to make good the ſaid 40,000 *l.* for payment of the annuities to be purchaſed on this act.

97. Sect. 3. The ſaid ſum of 100,000 *l.* ſhall be applied to the diſcharging the quarterly payments to grow due before the 30th of *September*, 1710.

98. Sect. 4. The duties upon low wines by 5 *Ann. cap.* 19, granted for the ſaid term of 96 years, ſhall be continued in *Great-Britain*, after the ſaid 96 years, for one year; and the duties upon hawkers and pedlars, and powers for granting licences, which, by 5 *Ann. cap.* 19, are to continue for 96 years, from the 24th of *June*, 1710, ſhall be paid in *Great-Britain* after the ſaid 96 years for one year, and ſuch duties upon vellum, *&c.* as by 5 *Ann. cap.* 19, were continued for 96 years from the laſt of *July*, 1710, ſhall be continued in *Great-Britain*, after the ſaid 96 years,

one year; and the tonnage and poundage, &c. *(called the one third ſubſidy)* which, by 5 *Ann. cap.* 19, are continued for one year, after 96 years, commencing the 8th of *March*, 1706, ſhall be continued throughout *Great-Britain*, from the expiration of the ſaid one year for one whole year from thence.

99. Sect. 5. The exciſe upon beer, &c. which, by 4 *Will.* and *Mar. cap.* 3, was granted for 96 years from the 25th of *January*, 1692, ſhall be continued throughout *Great-Britain*, after the ſaid 96 years, for 15 years.

100. Sect. 6. The ſaid ſeveral duties hereby granted for further terms, ſhall be raiſed by ſuch rules and penalties, &c. as the like duties granted or continued by 5 *Ann. cap.* 19.

101. Sect. 7. The overplus of the ſaid duties, and the ſaid ſum, not exceeding 100,000*l.* and the ſeveral duties which ſhall ariſe by the ſaid further terms by this act granted, ſhall be appropriated for making up the ſaid 40,000*l. per annum*, and all the money ariſing by the overpluſſes and proviſion hereby made, out of which the 40,000*l. per annum* is to be raiſed, ſhall be entered in books to be kept in the offices of the auditor of the receipt and clerk of the pells, to which all perſons concerned are to have acceſs without fee.

102. Sect. 8. Natives or foreigners may pay into the Exchequer ſums not exceeding 640,000*l.* for purchaſing annuities payable for 99 years, from the 25th of *March*, 1708, at 16 years purchaſe; *viz.* 160*l.* for every annuity of 10*l.* the conſideration to be paid on or before the 25th of *September*, 1708, all the annuities not to exceed 40,000*l. per annum*, payable at the four moſt uſual feaſt-days.

The following proviſions are the ſame as in the act 5 Ann. cap. 19, viz. *from* 88 *to paragraph* 94, *inclusive.*

103, Stat. 6 *Ann. cap.* 11. ſect. 1. For raiſing the ſum of 1,280,000*l. viz.* 1,020,000*l.* for the charges of

of the war, *&c.* and 260,000 *l.* to make good the payments of the annuities to be purchaſed on this act, as herein after mentioned: there ſhall be paid to her majeſty, *&c.* from the laſt day of *July*, 1712, for 96 years, one half part of the ſubſidies granted by 5 *Ann. cap.* 27; *viz. one half of the old ſubſidy.*

104. Sect. 2. Where drawbacks are to be made; there ſhall be the like; and the duties ſhall be raiſed through *Great-Britain* by the ſame methods, and ſubject to ſuch rules as by 5 *Ann. cap.* 27, or any other acts therein referred to.

105. Sect. 3. The monies ariſing by this act ſhall be paid into the Exchequer ſeparately.

106. Sect. 4. After the principal and intereſt which, by 5 *Ann. cap.* 27, is charged, ſhall be ſatisfied, then half of the ſubſidies to ariſe by 5 *Ann. cap.* 27, ſhall, in like manner, be paid into the Exchequer ſeparately on *Wedneſday* in every week, or on the next day not an holiday.

107. Sect. 5. The ſaid 260,000 *l.* part of the contribution-money, to be raiſed by ſale of annuities on this act, ſhall be reſerved for the payment of the ſaid annuities quarterly, before the ſaid duties can take place for payment thereof.

108. Sect. 6. The duties hereby granted, and the ſaid 260,000 *l.* ſhall be appropriated thereunto; and the ſaid half ſubſidies, out of which the annuities are to be ſatisfied, ſhall be entered in books to be kept by the auditor of the receipts and clerk of the pells, to which all perſons concerned may have acceſs without fee.

109. Sect. 7. For raiſing the ſaid 1,280,000 *l.* all perſons may pay into the Exchequer ſums not exceeding 1,280,000 *l.* for purchaſing annuities payable during 99 years from the 24th of *June*, 1708, at 16 years purchaſe; *viz.* 160 *l.* for every annuity of 10 *l.* the conſideration-money to be paid on or before the twentieth of *October*, 1708; all the annuities not to exceed 80,000 *l. per annum*, and payable at the four uſual feaſts.

The folllowing provisions are the same as before; viz. *from paragraph* 88, *to paragraph* 94, *inclusive.*

110. Stat. 8 *Ann. cap.* 4. sect. 13. The duties upon coals, *&c.* and the new duties on houses, are made a fund for 32 years, for raising, from the 29th of *September*, 1710, the yearly sum of 135,000 *l.* to be brought into the Exchequer: and if any deficiency be, it shall be made good out of the first aid granted by parliament.

111. Sect. 14. Every adventurer must advance 10 *l.* and as many entire sums of 10 *l.* as he will; and for each 10 *l.* he shall receive a ticket to be put into a lottery, to contain 150,000 tickets, and drawn as the act prescribes; if it be drawn a blank, it entitles him to 14 *s. per annum* for 32 years, to be paid once a year at *Michaelmas*; if it be a prize, it shall be paid half yearly.

112. Sect. 18. The prizes shall be

1	of	1000
3		500
4		400
4		300
4		200
20		100 } yearly.
30		50
100		20
601		10
2983		5
First and last drawn		50

113. Sect. 26. A transfer-office shall be established in *London*, and a commissioner thereof appointed by the queen, to whom the ticket-book shall be delivered by the managers: this commissioner is to receive all tickets delivered out, and is to deliver to the bearer 32 vellum or paper tickets for the 32 payments of the 14 *s.* every year upon the blanks, and 64 vellum or paper tickets for the 64 half yearly payments upon the prizes; false tickets shall be cut, and the bearer pay 5 *l.* to be recovered by the oath of the

the officers of the transfer, before a baron of the Exchequer.

114. Sect. 28. If a perſon buy a counterfeit, and does not come to the office to prove it ten days after he received it, if within ten miles of *London*, or thirty days, if in any other part of *Great-Britain*; the perſon ſelling or parting with it, ſhall not be puniſhable.

115. Sect. 29. All things to be done at the Exchequer, or Transfer-office, ſhall be done without fee; and if any officer offend, he ſhall be incapable of office, and ſhall anſwer treble damages to any adventurer that will ſue with coſt; one third to her majeſty, and two thirds to the proſecutors.

116. Sect. 32. There ſhall be, in the receipt of the Exchequer, a diſtinct office for paying theſe annuities; and officers ſhall be appointed by the commiſſioners of the Treaſury, who ſhall take ſecurity; and the monies of the fund ſhall, by the commiſſioners of the Treaſury, without further warrant, and in ſuch proportion as ſhall be ſufficient, be iſſued to ſuch officers by way of impreſt for payment of the annuities.

117. Sect. 33. The commiſſioners and officers of the Transfer-office, *&c.* ſhall be ſubject to the orders of the Treaſury.

118. Sect. 35. Benefit-tickets ſhall be paid in arithmetical progreſſion, beginning with number 1, and ſo on, and ending with the number 3750; and blank tickets ſhall be paid in the ſame manner, beginning at 1, and ending at 146,250; in the next year the benefits and blanks ſhall be paid in arithmetical number, deſcending, or backwards, and ſo every year alternatively.

119. Stat. 8 *Ann. cap.* 7. ſect. 25. Yearly, during 32 years, from the 29th of *September*, 1710, 81,000 *l.* out of the new duties of exciſe, and upon imported commodities, by this act granted, ſhall be the yearly fund for paying the annuities after mentioned;

tioned; the deficiences to be made good out of the fund appropriated by 8 *Ann. cap.* 4.

120. Sect. 27. The monies arising by these duties shall be entered in books, *&c.* as in paragraph 84.

121. Sect. 28. For raising 900,000 *l.* any persons may pay into the Exchequer sums of money, for the purchase of annuities for 32 years, from the 29th of *September*, 1710, at 9 *l. per cent.* The purchase-money to be paid before the 1st day of *November*, 1710

The following provisions are the same as before, viz. *from paragraph* 88 *to paragraph* 94, *inclusive.*

122. Stat. 1 *Geo.* I. *cap.* 36. sect. 16. In case any annuities, purchased upon the act 2 and 3 *Ann. cap.* 3, whereon the reversions be purchased according to stat. 3 and 4 *Ann. cap.* 2, shall not be demanded at the Exchequer within two years after the same shall become payable; and in case certificates of the lives of the nominees shall not be produced to the officers, or proof made thereof, according to former acts, within two years after the said annuities shall become payable; then such nominees shall be taken to be dead, and the persons that have purchased such reversions, shall receive the annuities till such certificate shall be produced, or proof made, and shall not be accountable for such part of the annuities as they shall have received for default of such certificate or proof.

123. Stat. 5 *Geo.* I. *cap.* 2. sect. 8. All indorsed assignments of orders made subsequent to any assignments of the late earl of *Ranelagh*, or other persons authorized to make the same by stat. 11 and 12 *Will.* III. *cap.* 3. sect. 12, shall be effectual; and an entry of such subsequent assignment may be made in the office of receipt, so as an affidavit be produced to the auditor, that the name of the assignor is his proper hand-writing, as the person verily believes, and so as

ſuch ſubſequent aſſignments be brought to be entered in the office within 2 months after making the ſame.

124. Stat. 6 *Geo.* I. *cap.* 11. ſect. 22. The duties by this act impoſed upon plate made or imported, ſhall be chargeable with the yearly fund hereafter mentioned, and all the annuities payable out of the ſame, in purſuance of this act, ſubject to redemption.

125. Sect. 24. Yearly, reckoning the firſt year to begin the 25th of *March*, 1720, the ſum of 13,000*l.* out of the duties on plate, in caſe the ſame ſhall extend thereto, ſhall be the yearly fund; and, in caſe the ſaid annuities ſhall not amount to 13,000*l. per annum*, then the monies ſo ariſing, ſo far as the ſame will extend, ſhall be part of the yearly fund for anſwering the annuities herein after mentioned; and in caſe, within any one year, the ſame ſhall not amount to ſo much as ſhall diſcharge the annuities, then ſo much as ſhall be ſufficient ſhall be made good out of the ſinking-fund, ſo as the ſums to be ſupplied out of the ſaid fund do not exceed the monies ſaved by taking off the drawback of the duties on hops exported to *Ireland*, purſuant to clauſes herein after contained; and if the ſame ſhall at any time exceed ſuch ſaving, then the reſidue of ſuch deficiency ſhall be ſupplied out of the next aids to be granted in parliament.

126. Sect. 25. The monies ariſing by the ſaid duties on plate, ſhall be entered in books, *&c.* as in paragraph 94.

127. Sect. 26. Any perſons may pay into the Exchequer any ſums not exceeding in the whole 312,000*l.* for the purchaſe of annuities, to commence from the 25th of *March*, 1720, and to be payable to ſuch contributors, *&c.* till redemption by parliament: which annuities ſhall be at the rate of 4*l. per cent.* and the annuities ſo to be purchaſed, ſhall be paid at *Michaelmas* and *Lady-day*.

128. Sect. 27. In the offices of the auditor of receipt, and clerk of the pells, books ſhall be kept, *&c.* as in paragraph 88.

129. Sect. 28.

129. Sect. 28. The annuities ſhall be paid out of the ſaid duties, and other proviſions made by this act, and every contributor, *&c.* ſhall enjoy the annuities ſo to be purchaſed till redemption; and ſuch intereſt ſhall be a perſonal, and not a real eſtate, and ſhall go to executors or adminiſtrators, and not to the heirs, and ſhall be free from taxes.

130. Sect. 29. Every contributor ſhall have a talley, and an order for paying the annuity till redemption; which order ſhall be ſigned by the treaſurer and under-treaſurer of the Exchequer, or by three or more of the commiſſioners of the Treaſury; and the ſame ſhall not be determinable upon the death or removal of any of them; nor ſhall any lord high-treaſurer, *&c.* have power to revoke ſuch orders.

131. Sect. 31. Purchaſers of ſuch annuities, *&c.* may, by writing, or by their laſt will in writing, aſſign or deviſe their intereſt, *&c.* as in paragraph 93.

132. Sect. 34. All receipts, iſſues, *&c.* to be performed in the Exchequer, ſhall be done by the officers there without fee, otherwiſe than by this act is appointed; and if any ſuch officers ſhall demand any fee, *&c.* or ſhall miſapply any of the monies, or ſhall iſſue the ſame otherwiſe than according to this act, or ſhall not keep books or regiſters, and make entries, and perform all other things by this act required, every ſuch officer ſhall forfeit his office, be incapable of any place of truſt, and ſhall anſwer treble damages and coſts to any contributor or perſon claiming under him, that will ſue for the ſame; one third part of the ſum recovered to be paid into the Exchequer for the benefit of the crown, and the other two third parts for the uſe of the proſecutor.

133. Sect. 35. Out of the monies ariſing of the duties on plate hereby granted, the Treaſury may reward the officers and clerks in the Exchequer, and others employed in the execution of this act, and diſcharge all incident charges, as they ſhall think reaſonable.

134. Sect. 36.

134. Sect. 36. If there be any ſurplus of the monies ariſing by the duties hereby granted, after all the annuities, charges and payments directed by this act, ſhall be ſatisfied, or money ſufficient reſerved for that purpoſe, ſuch ſurplus ſhall be reſerved for the public uſe, and be diſpoſed of by parliament.

135. Sect. 37. Perſons ſued for any thing done in purſuance of this act, may plead the general iſſue, *&c.* and upon a verdict, *&c.* the defendant ſhall have treble coſt.

136. Sect. 38. Upon notice to be printed in the *London Gazette*, and affixed upon the Royal Exchange, by authority of parliament, at any one of the feaſt days for payment; and upon repayment by parliament of the principal ſums, and upon payment of all arrears, the annuities ſhall ceaſe: and any vote of the Houſe of Commons, ſignified by the ſpeaker in writing, to be inſerted in the *Gazette*, and affixed upon the Royal Exchange, ſhall be adjudged ſufficient notice.

137. Stat. 8 *Geo.* I. *cap.* 20. ſect. 43. The proprietors of the debentures made forth to the inhabitants of the iſlands of *Nevis* and *St. Chriſtopher*'s, by virtue of the acts 9 *Ann. cap.* 23, and 10 *Ann. cap.* 34, their executors, *&c.* ſhall have annuities after the rate of 3 *l. per cent.* for and in lieu of the principal and intereſt; *viz.* 99,361 *l.* 16 *s.* principal, and 41,731 *l.* 19 *s.* 1 *d.* farthing intereſt, due and unpaid to them, on their ſaid debentures, to commence from *Michaelmas*, 1721, and be payable half yearly, till redeemed by parliament; charged on the general fund eſtabliſhed by 3 *Geo.* I. *cap.* 7: and the Treaſury, upon producing the ſaid debentures, are to iſſue ſtanding orders for paying the ſaid annuities to the proprietors, their executors, *&c.* out of the general fund till redemption; which annuities ſhall be deemed perſonal eſtates, and ſhall be free of all taxes; and the proprietors may aſſign or deviſe their intereſt in any ſuch annuity, or any part thereof;

and

and no ſuch aſſignment ſhall be revocable, ſo as an entry of ſuch aſſignment or will be made in books kept for that purpoſe in the auditor of the receipt's office, within three months after ſuch aſſignment or death of the deviſor. In default of ſuch aſſignment or deviſe, the intereſt of ſuch perſon ſhall go to their executors, *&c.* and the annuities ſhall be paid without fee.

138. Sect. 44. The Treaſury may reward the officers and clerks, *&c.* and ſatisfy incident charges out of the ſinking fund.

139. Sect. 45. On public notice in the *Gazette*, and affixed on the Royal Exchange, by authority of parliament, at any of the uſual feaſts; and upon repayment of the principal ſums for which the annuities ſhall be payable, and on payment of all arrearages, to be computed by the day, at 3 *l. per cent. per annum*, till actual repayment, the annuities ſhall ceaſe. And any vote of the Houſe of commons, ſignified by the ſpeaker in writing, to be inſerted in the *Gagette*, and affixed on the Royal Exchange, ſhall be ſufficient notice.

140. Stat. 9 *Geo.* I. *cap.* 12. ſect. 1. The proprietors of the ſtanding orders made forth in purſuance of the act, 6 *Geo.* I. *cap.* 11. and 8 *Geo.* I. *cap.* 20. may by aſſignment endorſed on their orders, aſſign, or transfer their intereſt; which being notified to the office of the anditor of the receipt, the officers there ſhall (without affidavit) cauſe an entry thereof to be made in the book of regiſtry for ſuch orders without fee; and after ſuch entry made, ſuch aſſignment ſhall entitle the aſſignee, his executors, *&c.* to the benefit thereof, and payment thereon; and ſuch aſſignee may in like manner aſſign again, and ſo *toties quoties*; and it ſhall not be in the power of the perſons, who have made ſuch aſſignments, to make void the ſame.

141. Sect. 2. The Treaſury may direct the turning ſeveral orders for ſmall ſums of 500 *l.* a piece, or under,

under, into one or more orders for larger ſums, and cauſe new ſtanding orders to be made forth accordingly; in which caſe the former orders ſhall be delivered up and cancelled; and the auditor ſhall take care; on the making out of new orders, not to mix any order made out in purſuance of one of the ſaid acts, with any order made out in purſuance of the other of the ſaid acts; and that ſuch memorandums be made on the new orders, as may denote their being made out in lieu of ſuch orders for ſmall ſums, and as may ſecure the public againſt double payments.

142. Sect. 3. The Treaſury may cauſe to be made forth new ſtanding orders in lieu of ſuch as may happen to be defaced or incumbered with many aſſignments, or that ſhall become otherwiſe defective, ſo as ſuch defaced, *&c.* orders be at the ſame time delivered up and cancelled. And the auditor ſhall take care, that ſuch memorandums be made on the new orders, as may denote their being made out in lieu of defaced orders, *&c.* and as may ſecure the public againſt double payment.

143. Sect. 4. If any perſon, after the 2d of *April*, 1723. ſhall forge, or procure to be forged *&c.* or knowingly act or aſſiſt in the forging, *&c.* any order made forth in purſuance of the ſaid act, or any aſſignment of ſuch order, or of the annuities payable thereon, or any receipt or diſcharge to the Exchequer, for the annuity due on ſuch ſtanding order, or any letter of attorney; or other authority to transfer, aſſign, *&c.* any ſuch order, or to receive the annuities due thereon, or ſhall counterfeit, *&c.* any name of the proprietor of ſuch order in any aſſignment, receipt, letter of attorney; *&c.* or ſhall fraudulently demand to receive any ſuch annuity, by virtue of ſuch forged receipt, *&c.* or ſhall falſely and deceitfully perſonate any true proprietor of any the ſaid orders, thereby aſſigning or endeavouring to aſſign any ſuch order, or receiving, or endeavouring to receive the money of ſuch proprietor, as if ſuch offender were the lawful owner thereof; in every ſuch caſe

caſe, every ſuch perſon (being convicted thereof in due form of law) ſhall be adjudged guilty of felony, without benefit of clergy.

144. Stat. 12. *Geo.* I. *cap.* 2. ſect. 1. It ſhall be lawful for his majeſty, his heirs, *&c.* to continue the deductions of 6*d.* in the pound, which by the act of 7 *Geo.* I. *cap*, 27, his majeſty was impowered to make upon all penſions and annuities charged on the civil-liſt revenues, and upon all ſalaries, fees, and wages, payable in reſpect of any offices of profit (the pay of commiſſion and non-commiſſion officers, and private men ſerving in the navy or army only excepted) for the purpoſes in this act.

245. Sect. 2. Every year after the 24th of *June*, 1726, the ſum of 30,000 *l.* which ſhall ariſe of the ſaid deductions, ſhall be a fund for paying annuities after the rate of 3*l. per cent. per annum*, to the contributors in the lottery herein aftermentioned, till redemption thereof; and the ſaid yearly ſum of 30,000*l.* or ſo much thereof as ſhall be ſufficient to ſatisfy the ſaid annuities, ſhall be paid half-yearly at *Chriſtmas*, and *Midſummer*, at the Exchequer, to the caſhier of the Bank of *England*.

The fourteen following clauſes of this act, relate only to the manner of delivering out the tickets; the duty of the managers and receivers; the method of drawing the lottery, &c.

146. Sect. 17. After the lottery is drawn, the tickets ſhall be exchanged for certificates to be ſigned by the managers.

147. Sect. 18. The certificates ſhall be numbered, and the officers ſhall enter in a book, the name of every perſon who brings any tickets to be exchanged, and the value in principal money, and the annuity attending the ſame. *&c.* and the certificates ſhall be ſigned by the officers; and ſhall be directed to the accomptant-general of the Bank of *England*.

148. Sect. 19. The accomptant-general of the Bank, ſhall give credit to the perſons named in ſuch certificates, for the principal ſums contained in ſuch

certificates

certificates: and the perſons to whoſe credit the ſaid principal ſums ſhall be entered, may transfer the ſame in books to be kept for that purpoſe; and the principal ſums ſo aſſigned, ſhall carry the ſaid annuities of 3*l. per cent.* and ſhall be ſtock transferrable, by this act, till redemption thereof.

149. Sect. 20. Every perſon named in the certificates ſhall enjoy an annuity of 3*l. per cent.* for the ſums ſpecified therein, out of the money of the yearly fund, to be paid half-yearly, till the annuities ſhall be redeemed, and the ſaid yearly ſum of 30,000*l.* ſhall be appropriated thereto.

150. Sect. 21. The annuities ſhall be free from taxes.

151. Sect. 22. The Bank ſhall appoint a perſon within their office in *London*, to be their chief caſhier, and another to be their accomptant general: and the caſhier to whom the monies ſhall be iſſued for payment of the ſaid annuities, ſhall pay the ſame, and render his account thereof, according to the courſe of the Exchequer; and the accomptant general ſhall examine all receipts and payments of the caſhier, and the vouchers relating thereto. Thoſe annuities ſhall be deemed perſonal eſtates, not deſcendible to the heir and not liable to foreign attachment, by the cuſtom of *London*, or otherwiſe.

152. Sect. 23. All the principal monies for which the annuities are payable, ſhall be deemed one capital or joint ſtock, and called the *joint ſtock of* 3*l. per cent. annuities*; and all perſons, in proportion to their annuities, ſhall have a ſhare in ſuch ſtock; and ſuch ſhares ſhall be aſſignable, transferrable and deviſeable in the ſame manner as is preſcribed by the act. 1 *Geo.* I. *cap.* 19. touching the annuities of five *per cent.* therein mentioned, *viz.* 1. *There ſhall be kept in the office of the accountant in London books, wherein transfers of the ſtock ſhall be entered, which entries ſhall be ſigned by the parties making ſuch transfers, or by their attorneys authorized by writing under hand and ſeal. to be atteſted by two witneſſes; and the perſons,*

to whom ſuch tranſfers ſhall be made, ſhall under write their acceptance, and no other method of tranſferring the ſtock ſhall be good. 2. *Perſons poſſeſted of ſuch ſtock, may deviſe the ſame by will in writing, atteſted by two witneſſes; but ſuch deviſee ſhall receive no payment, till ſo much of the will as relates to the ſtock, be entered in the office.* And no ſtamp duties ſhall be chargeable on ſuch transfers; and the Bank ſhall continue a corporation till theſe annuities ſhall be redeemed; and none of the members thereof ſhall incur any diſability for doing any thing, in purſuance of this act.

153. Sect. 24. No fee ſhall be taken for paying of theſe annuities, by the caſhier, nor for any tranſfer thereof, on pain of forfeiting 20*l.* to the party grieved to be recovered with coſts.

154. Sect. 25. It ſhall be lawful for his majeſty on ſix months notice to be given, under his ſign manual, and affixed on the Royal Exchange, on any of the feaſt days of payment, to redeem theſe annuities, by paying to the proprietors the purchaſe-money, and all arrearages of the ſaid annuities; and after ſuch payment, the annuities ſhall ceaſe.

155. Sect. 26. All ſuch monies as ſhall ariſe from the ſaid deductions of 6*d.* in the pound, ſhall be appropriated for diſcharging the ſaid annuities, till redeemed half yearly, to wit, within twenty days, next after the 25th of *December*, and the 24th of *June*. In every year the Treaſury ſhall cauſe an account to be taken of the monies which ſhall, before every half year, have ariſen into the Exchequer, in the preceding half year, upon the ſaid deductions; and the monies ſo ariſing, ſhall be immediately paid over to the chief caſhier of the bank, towards diſcharging the annuities; and if the deductions prove deficient, the ſame ſhall be made good out of the hereditary revenues.

156. Sect. 27. If the ſaid deductions in any year ſhall have proved ſo deficient as not to have brought into the Exchequer, the ſum of 30,000*l.* then the arrears ſhall be made good out of the monies that ſhall ariſe on the ſaid deductions, after the end of ſuch year;

year; and any ſums paid out of the hereditary revenues, ſhall alſo be replaced out of the ſame.

157. Sect. 28. In caſe at the end of any one year, the ſaid deductions ſhall be more than ſufficient to anſwer the ſaid 30,000*l.* *per annum*, and to replace what may have been iſſued out of the hereditary revenues towards making good the ſame, ſuch ſurplus ſhall be reſerved in the Exchequer, and not be thence iſſued but by authority of parliament.

158. Stat. 13 *Geo.* I. *cap.* 3. ſect. 9. Whereas in purſuance of the Act, 12 *Geo.* I. *cap.* 2. *For granting to his majeſty the ſum of one million, to be raiſed by way of a lottery*, 11,093, tickets were returned into the Exchequer, as the ſum of 110,930*l.* part of the ſupply granted for the year 1726, but upon drawing the ſaid lottery, the ſaid 11,093 tickets happened to be entitled in blanks and benefits computed together, to the principal ſum of 103,272*l.* 10*s.* as their ſhare in the joint ſtock of 3*l.* *per cent.* annuities, created by the ſaid act.

159. Sect. 11. And whereas the ſaid lottery tickets have been applied towards making good the deficiency of the general fund, for the years ending at *Michaelmas*, 1724, and at *Michaelmas*, 1725, and whereas in purſuance of ſeveral acts, ſtanding orders at the Exchequer are made out for debentures made out by authority of parliament, for the ſufferers at *Nevis* and *St. Chriſtophers*, for payment of ſeveral principal ſums, amounting together to 141,093*l.* 5*s.* 1*d.* farthing, attended with annuities of 3*l.* *per cent.* redeemable by parliament, and charged on the general fund, and whereas the proprietors of the ſaid orders are deſirous to exchange them for an equal ſhare in the joint ſtock of 3*l.* *per cent.* annuities, transferrable at the Bank; therefore the Treaſury ſhall cauſe all the ſaid lottery tickets remaining in the Exchequer, to be entered for ſuch certificates, as the lottery act directed, in the name of one of the tellers, and the ſhare which the ſaid lottery tickets are entitled to in the ſaid joint ſtock of 3*l.* *per cent.* annuity

ſhall be veſted in ſuch teller upon truſt to transfer the whole, or any part of the principal ſum to which the ſaid lottery tickets are intitled in the joint ſtock of 3*l.* *per cent.* annuities, to ſuch perſons, as being proprietors of the laſt mentioned ſtanding orders, ſhall voluntarily deliver up the like principal ſum in any of theſe debenture-orders, and to transfer the reſidue of the principal ſum in the joint ſtock of 3*l.* *per cent.* annuities, as ſhall be directed by parliament.

160. Stat. 4 *Geo.* II. *cap.* 9. ſect. 1. After reciting the grant of the additional duties upon ſtamped vellum, parchment and paper, by Stat. 9 and 10 *Will.* III. *cap.* 25. and that the ſame are now free from incumbrances; it is enacted, that the annuities by this act made payable in reſpect to the principal ſum of 1,200,000*l.* until redemption, ſhall from the feaſt of *St. John Baptiſt*, 1731, be charged upon the monies, which from the ſaid feaſt day, ſhall ariſe in the Exchequer, by the ſaid additional duties on ſtamped vellum, parchment and paper.

161. Sect. 2. All monies ariſing by the ſaid additiona lduties on ſtamped vellum, *&c.* ſhall be entered in books, to be kept in the offices of the auditor of the receipt of Exchequer, and clerk of the pells, to which all perſons concerned ſhall have acceſs without fee.

162. Sect. 3. It ſhall be lawful for any perſons, natives or foreigners, *&c.* to contribute into the receipt of his majeſty's Exchequer, at ſuch times as ſhall be appointed by the commiſſioners of the Treaſury, any ſums of money not exceeding 400,000*l.* in part of the ſaid 1,200,000*l.* for the purchaſe of annuities, to commence from the 29th of *September*, 1731, and to be paid to ſuch contributors, their Executors, adminiſtrators, ſucceſſors and aſſigns, (until redemption by parliament) at the rate of 3*l.* 10*s.* *per annum* for 100*l.* which annuities ſhall be payable at the feaſt of the annunciation, and *St. Michael* the archangel, by equal portions; the firſt payment to be due at the feaſt of the annunciation, 1732.

163. Sect. 4.

163. Sect. 4. In the offices of the auditor of the receipts, and clerk of the pells, there ſhall be kept books, in which ſhall be entered the names of all contributors; which it ſhall be lawful for the ſaid contributors to inſpect without fee.

164. Sect. 5. The annuities ſo to be purchaſed ſhall be charged upon the money ariſing by the ſaid additional duties on ſtamped vellum, *&c.* and ſhall be perſonal and not real eſtate, and ſhall go to the executors, *&c.* and not to the heirs; and ſhall be free from taxes.

165. Sect. 6. Every contributor, upon payment of the purchaſe-money ſhall have tallies levied, importing the receipt of the purchaſe money, and ſhall have an order for paying the ſaid annuity until redemption, which order ſhall be valid, and not determinable upon the deaths or removal of any treaſurer, or under treaſurer, *&c.*

166. Sect. 7. The proprietors of the orders may by aſſignment indorſed, aſſign their intereſt of ſuch orders to any other perſons, which being notified in the office of the auditor of the receipt, the officers there ſhall cauſe an entry thereof to be made in the book of regiſtry for ſuch orders, without fee.

167. Sect. 8, Three or more of the commiſſioners of the Treaſury may cauſe to be made forthwith new ſtanding orders, in lieu of defaced, incumbered, or defective orders; and the auditor of the receipt ſhall take care, that ſuch entries be made upon the new orders, as may denote their being made out in lieu of defaced, incumbered, or defective orders cancelled.

168. Sect. 9. If any perſon ſhall forge any order made forth in purſuance of this act, or any aſſignment of ſuch order, or any receipt to the Exchequer, for the annuities due on ſuch order, or any letter of attorney, to aſſign ſuch order, or to receive the annuities due thereon, *&c.* or ſhall knowingly or fraudulently demand ſuch annuity, by virtue of ſuch forged receipt, or letter of attorney, or ſhall perſo-

nate any proprietor of the ſaid orders, all perſons thereof lawfully convicted, ſhall be adjudged guilty of felony, without benefit of clergy.

169. Sect. 10. All receipts, and other things to be performed in the Exchequer, ſhall be done without fee; and in caſe the officers demand any fee, or miſapply the monies to be paid into the receipt of the Exchequer, for making up the aforeſaid fund, or ſhall pay the ſame, otherwiſe than according to this act, or ſhall not keep books and make entries, and do all other things, which by this act, they are required to perform, every ſuch officer ſhall forfeit his office, and be incapable of any office whatſoever, and ſhall pay treble damages, and coſts of ſuit to any contributor, or perſon claiming under him, that will ſue for the ſame; to be recovered by action of debt, *&c.* in any of his majeſty's courts of record at *Weſtminſter*, *&c.* one third of which ſum ſo to be recovered, ſhall be for the benefit of his majeſty, and the other two thirds for the proſecutor.

170. Sect. 11. Out of the monies ariſing for the ſaid additional duties on ſtamped vellum, *&c.* it ſhall be lawful for the commiſſioners of the Treaſury, *&c.* to reward the officers and others that ſhall be imployed in relation to the ſaid annuities for their labour, and to diſcharge incident charges.

171. Stat. 9 *Geo.* II. *cap.* 34. ſect. 1. The annuities by this act granted in reſpect of the principal of 600,000*l.* until redemption by parliament, ſhall from the feaſt of *St. John Baptiſt*, 1736, be charged upon the *ſinking fund*.

172. Sect. 2. It ſhall be lawful for natives or foreigners to pay into the receipt of his majeſty's Exchequer, at ſuch times as ſhall be appointed by the commiſſioners of the Treaſury, 600,000*l.* for the purchaſe of annuities of 3*l. per annum*, for every 100*l.*

173. Sect. 3. In the offices of the auditor of the receipt and clerk of the pells, there ſhall be kept books, in which ſhall be entered the names of all contributors.

174. Sect.

174. Sect. 4. All contributors shall have the annuities so to be purchased until redemption, and such annuities shall be personal estate and shall be free from taxes.

The following provisions are the same as in stat. 4 Geo. II. cap. 9. *from paragraph* 165 *to* 169.

175. Sect. 10. Out of the monies arising of the sinking fund, it shall be lawful for the commissioners of the Treasury to reward the officers and clerks.

176. Sect. 11. Upon one year's notice, to be printed in the *London Gazette*, and affixed upon the Royal Exchange, by authority of parliament, and upon repayment of the principal sums, the said annuities shall cease; and any vote of the House of Commons signified by the speaker, shall be sufficient notice.

177. Stat. 11 *Geo.* II. *cap.* 27. sect. 1. Out of the surpluses, exceses, or overplus monies, called *the sinking fund*, there shall be issued, and applied, a sum not exceeding 1,500,000 *l.* for the service of the year 1738.

178. Sect. 2. The annuities by this act granted in respect of the further sum of 500,000 *l.* until redemption by parliament, shall, from the feast of St. *Michael*, 1738, be charged upon the sinking fund.

179. Sect. 3. It shall be lawful for natives or foreigners, to pay into the Exchequer, at such times as shall be appointed by the commissioners of the Treasury, 500,000 *l.* for the purchase of annuities at 3 *l. per annum* for every 100 *l.*

180. Sect. 4. In the offices of the auditor of the receipt and clerk of the pells, there shall be kept books, in which shall be entered the names of all the contributors.

181. Sect. 5. All the contributors shall have the annuities so to be purchased until redemption; and such annuities shall be personal estate, and shall be free from taxes.

The following provisions in sections 6, 7, 8, 9, *and* 10, *of this act, are the same as in stat.* 4 Geo. II. cap. 19, *from paragraphs* 65 *to* 69, *inclusive.*

182. Sect. 11. Commissioners shall pay officers for their pains out of the sinking fund.

183. Sect. 12. Upon one year's notice to be printed in the *London Gazette*, and affixed upon the Royal Exchange in *London*, by authority of parliament, and upon repayment of the principal sums, the said annuities shall cease; and any vote of the House of Commons signified by the speaker, shall be sufficient notice.

184. Stat. 15 *Geo.* II. *cap.* 19. sect. 1. The annuities by this act granted in respect of the principal sum of 800,000*l.* until redemption by parliament, shall, from the feast of St. *John* the Baptist, 1742, be charged upon the *sinking fund.*

185. Sect. 2. It shall be lawful for natives or foreigners to pay the chief cashier of the Bank of *England*, at the times herein limited, the sum of 600,000*l.* for the purchase of annuities of 3*l. per annum* for every 100*l.*

186. Sect. 3. In the office of the accomptant-general of the Bank of *England*, there shall be kept books, in which shall be kept the names of all contributors, and duplicates of such books shall be transmitted into the Exchequer.

187. Sect. 4. The annuities shall be paid free of charges.

188. Sect. 5. The Bank shall appoint a chief cashier and an accomptant-general.

189. Sect. 6. The accomptant-general shall inspect and examine all the receipts and payments of the cashier, in order to prevent any fraud, negligence, or delay; and such annuities shall be personal estate, and not descendable to the heir, and shall not be liable to any foreign attachment by the custom of *London*, or otherwise.

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190. Sect. 7. Intereſt at 4 *l. per cent.* ſhall be allowed for prompt-payment.

191. Sect. 8. The money contributed ſhall be a capital ſtock, on which the ſaid annuities of 3 *l. per cent. per annum* ſhall be attending, and which ſhall be aſſignable and transferrable, as this act directs.

192. Sect. 9. The annuities may be deviſed, and, in default of ſuch deviſe, ſhall go to the executors and adminiſtrators; and no ſtamp-duties whatſoever ſhall be chargeable on the ſaid transfers.

193. Sect. 10. Acceptors of ſtock ſhall pay the remaining contribution-money.

194. Sect. 11. No perſon ſhall be admitted to purchaſe unleſs one fourth part at leaſt of the conſideration-money be paid to the caſhier on or before the 6th of *July*, 1742.

195. Sect. 12. Unleſs another fourth of the contribution-money be paid on the 6th of *September* then next, and the other two fourths on the 6th of *November* and *December*, then ſo much as ſhall be paid for the firſt payment ſhall be forfeited.

196. Sect. 13. The Bank ſhall continue a corporation till the annuities be redeemed.

197. Sect. 14. No fee to be taken of the contributors.

198. Sect. 15. The commiſſioners of the Treaſury ſhall have power to allow to the ſaid caſhier or caſhiers, for his or their pains and trouble in reciving and accounting for the ſaid ſum of 800,000 *l.* a ſum not exceeding 500 *l.* out of the contribution or advance-money aforeſaid; and ſhall have power out of the ſaid ſinking fund; to allow and pay to the ſaid caſhier, or caſhiers, for the time being, an allowance not exceeding 250 *l. per annum*, for receiving the money to pay the annuities upon this act, and applying the ſame to that uſe, and for his pains and trouble in keeping and rendering his accounts thereof; and an allowance not exceeding 250 *l. per annum* to the ſaid accomptant-general for the time being, for

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his ſervice and trouble in performing the duty incumbent upon him by this act.

199. Sect. 16. Upon one year's notice, to be printed in the *London Gazette*, and affixed upon the Royal Exchange, by authority of parliament, and upon repayment of the principal ſums and all arrearages of the ſame annuities, the ſaid annuities ſhall ceaſe; and any vote of the Houſe of Commons, ſignified by the ſpeaker, ſhall be ſufficient notice.

200. Stat. 16 *Geo.* II. *cap.* 13. ſect. 1. The annuities by this act granted in reſpect of the principal ſum of 1,800,000*l.* until redemption by parliament, ſhall be charged upon the monies which ſhall, from time to time, ariſe of the rates and duties on low-wines, ſpirits, and ſtrong waters, granted by an act of this ſeſſion; and natives or foreigners may pay into the Bank of *England*, at ſuch times as by this act limited, any ſum or ſums not exceeding one million, in part of the ſaid ſum of 1,800,000*l.* for the abſolute purchaſe of annuities at 3*l. per annum* for every 100*l.* one fourth of the purchaſe-money to be paid on or before the 11th of *April*, 1743; one other fourth on or before the 15th of *July* then next; one other fourth on or before the 27th of *October*; and the remaining one fourth on or before the 20th of *December*. Caſhiers ſhall give receipts for the money paid them, and ſhall pay the money into the Exchequer.

201. Sect. 2. Books ſhall be kept at the Bank for public peruſal.

202. Sect. 3. The contributors ſhall have good and ſure eſtates and intereſts in the ſaid annuities for ever, ſubject to redemption, as herein after mentioned; and the ſaid annuities ſhall be free from taxes.

203. Sect. 4. A premium of 2*l. per cent.* ſhall be allowed for prompt-payment.

204. Sect. 5. If only one of the four payments be made, it ſhall be forfeited.

205. Sect. 6,

205. Sect. 6. Inſtead of annuities, the million may be raiſed by exchequer-bills, at the diſcretion of the commiſſioners of the Treaſury.

206. Sect. 8. The exchequer-bills ſhall be charged on the rates and duties on low wines, ſpirits and ſtrong waters aforementioned.

207. Sect. 9. The commiſſioners of the Treaſury may enlarge the time of paying the purchaſe-money.

208. Sect. 10. The annuities of 800,000*l.* that ſhall become due to the contributors to the lottery herein after mentioned, ſhall be charged upon the ſaid rates and duties on low wines, ſpirits, and ſtrong waters.

The nineteen following clauſes of this act relate only to the manner of delivering out the tickets; the duty of the managers and receivers; the method of drawing the lottery, exchanging tickets for certificates, &c.

209. Sect. 29. The annuities ſhall be deemed perſonal eſtate.

210. Sect. 30. The ſaid 1,800,000*l.* annuities, ſhall be deemed one capital ſtock, which is made aſſignable and transferrable as this act directs, and the accomptant ſhall keep transfer-books.

211. Sect. 31. The annuities may be deviſed, but ſuch deviſe ſhall be entered in the office, and no ſtamp-duties ſhall be charged on the ſaid transfers.

212. Sect. 32. The Bank of *England* ſhall continue a corporation till theſe annuities are redeemed.

213. Sect. 33. No fee ſhall be taken for receiving or paying the ſaid contribution-monies; and no fee ſhall be demanded or taken for any transfer upon pain of 20*l.*

214. Sect. 34. Commiſſioners of the Treaſury may appoint the ſalaries for the officers.

215. Sect. 35 and 36. Deficiencies ſhall be made good out of the ſinking fund, which ſhall be repaid out of the next ſupplies.

216. Sect. 37. Surpluſſes of the ſaid rates and duties ſhall be diſpoſed of by parliament.

217. Sect. 38. Upon one year's notice, to be printed in the *London Gazette*, and affixed upon the Royal Exchange by authority of parliament, and upon repayment of the principal ſums, the ſaid annuities ſhall ceaſe; and any vote of the Houſe of Commons ſignified by the ſpeaker, ſhall be ſufficient notice.

218. Stat. 17 *Geo.* II. *cap.* 18. ſect. 1. The annuities by this act granted in reſpect of the principal ſum of 1,800,000*l.* until redemption by parliament, ſhall be charged upon the ſurplus or remainder of the monies ariſen, or which ſhall ariſe, of or for the rates and duties on ſpirituous liquors granted by 16 *Geo.* II. and natives or foreigners may pay unto the chief caſhier of the Bank of *England*, at or before the times in this act limited, any ſum not exceeding 1,200,000*l.* in part of the ſaid 1,800,000*l.* for the abſolute purchaſe of annuities, to commence from the 9th of *April*, 1744, at 3*l.* *per annum* for every 100*l.* and payable at *Midſummer* and *Chriſtmas* yearly. Caſhier to give receipts, *&c. as in paragraph* 200.

219. Sect. 2. *As in paragraph* 201.

220. Sect. 3. *As in paragraph* 202.

221. Sect. 4. Contributors on prompt-payment ſhall be allowed 3*l.* *per cent.*

222. Sect. 5. *As in paragraph* 204.

223. Sect. 6. Lottery annnities of 600,000*l.* ſhall be charged on the ſurplus of the ſaid duties on ſpirituous liquors, and paid half yearly.

The nineteen following ſections of this act, relate only to the manner of delivering out the tickets, the duty of the managers, the method of drawing the lottery, exchanging tickets for certificates, &c.

223. Sect. 25. The annuities ſhall not deſcend to the heir, but ſhall be deemed perſonal eſtates.

224.

224. Sect. 26. *As in paragraph* 210.
225. Sect. 27. *As in paragraph* 211.
226. Sect. 28. *As in paragraph* 212.
227. Sect. 29. *As in paragraph* 213.
228. Sect. 30. *As in paragraph* 214.
229. Sect. 31. *As in paragraph* 215.
230. Sect. 33. *As in paragraph* 216.
231. Sect. 34. *As in paragraph* 217.

232. Stat. 17 *Geo.* II. *cap.* 33. ſect. 27. Reciting that divers perſons did, upon the credit of 2 *Ann. cap.* 3. (ſee paragraph 43) purchaſe ſeveral annuities, payable at the Exchequer for the life and lives of one, two, and three perſon or perſons reſpectively: that divers perſons did, upon the credit of 3 *Ann. cap.* 2, purchaſe a reverſionary or future eſtate, or intereſt, in ſeveral of the ſaid annuities, payable by virtue of the ſaid former act, to take effect from and after the determination of ſuch reſpective eſtates for one, two or three life or lives in being, and to continue during the remainder of a term of 99 years therein mentioned, to commence from the 25th of *March*, 1704, and then to come and unexpired: that ſome of the ſaid nominees for whoſe lives ſome of the ſaid annuities are or have been held, cannot be found or heard of, and the parties that are or were intitled to ſuch annuities, do not come or ſend to demand the ſaid annuities, ſo that it is become uncertain whether ſuch nominees be living or dead, whereby the titles of the purchaſers of ſuch reverſions are become and will become diſputable; for remedy whereof, it is enacted, *&c.* that, in caſe any of the ſaid annuities are or ſhall not be demanded at the Exchequer for 2 years after the ſame ſhall become payable; and in caſe certificates of the life and lives of any nominee, or nominees, ſhall not be produced to the officers of the Exchequer, within two years next after the ſaid annuities ſhall become payable, then, after the expiration of the ſaid two years, ſuch nominee or nominees ſhall be taken to be dead, and the purchaſer

chaſer of ſuch reverſion or reverſions of ſuch annuity or annuities, ſhall receive the ſaid reſpective annuities unil ſuch certificate ſhall be produced, or proof made, and ſhall not be accountable for ſuch part of the ſaid as he ſhall then have actually received, for default of ſuch certificate or proof.

233. Stat. 18 *Geo.* II. *cap.* 9. ſect. 1. From and after the 25th of *March*, 1745, there ſhall be paid, over and above the ſubſidies of tunnage and poundage, and all other ſubſidies, *&c.* for every ton of *French* wine and *French* vinegar, the ſum of 8*l.*

234. Sect. 5. The annuities by this act granted in reſpect of the principal ſum of two millions, until redemption by parliament, as alſo the other annuities by this act made payable at the Exchequer, during the lives of the ſeveral contributors to the lottery herein after mentioned, or the lives of their reſpective nominees, ſhall be charged on the ſaid duties.

235. Sect. 6. It ſhall be lawful for natives or foreigners to pay unto the chief caſhier of the Bank of *England*, at or before the times by this act limited, any ſum not exceeding 1,500,000 *l.* in part of the ſaid two millions, for the abſolute purchaſe of annuities, to commence from the 25th of *March*, 1745, at 3 *l. per annum* for every 100 *l.* Caſhier to give ſecurity, *&c. as in paragraph* 200.

236. Sect. 7. Books ſhall be kept at the Bank for public peruſal, and a copy of ſuch books ſhall be tranſmitted into the Exchequer.

237. Sect. 8. *As in paragraph* 202.

238. Sect. 9. Contributors ſhall have credit for the ſums they ſhall become intereſted in, which ſhall be transferrable in the Bank books.

239. Sect. 10. If the payments are not compleated by the times limited, ſo much of the conſideration-money as ſhall have been paid, ſhall be forfeited for the benefit of the public.

240. Sect. 11.

240. Sect. 11. The annuities of 500,000*l.* that ſhall become due to the contributors to the lottery herein after mentioned, ſhall be charged upon the ſaid additional impoſitions from *Chriſtmas*, 1745.

The 19 following ſections of this act relate only to the manner of delivering out the tickets, the duty of the managers and receivers, the method of drawing the lottery, exchanging tickets for certificates, &c.

241. Sect. 30. The annuities ſhall be deemed perſonal eſtates, and ſhall be exempt from any foreign atachment.

242. Sect. 31. The ſaid 2,000,000*l.* ſhall be deemed one capital ſtock, attended with annuities at 3 *l. per cent. per annum*, and ſhall be transferrable; for which purpoſe the accomptant-general ſhall keep transfer books.

243. Sect. 32. The annuities may be deviſed, and the transfers ſhall be made without ſtamps.

244. Sect. 33. The Bank ſhall continue a corporation till theſe annuities are redeemed

245. Sect. 34. Commiſſioners of the Treaſury may appoint the ſalaries for the ſeveral officers.

246. Sect. 35. Proviſo for redeeming the annuities, *&c. as in paragraph* 217.

247. Sect. 38. Annuities for lives of 4*l.* 10*s.* *per cent.* granted to ſuch contributors to the lottery, who ſhall advance and pay the ſum of 100*l.* for the purchaſe of ten tickets in the ſaid lottery, *&c.*

248. Stat. 19 *Geo.* II. *cap.* 12. ſect. 31. The annuities by this act granted in reſpect of the principal ſum of three millions, until redemption by parliament, as alſo the ſeveral and reſpective other annuities by this act made payable at the Exchequer, during the lives of the ſeveral contributors to the lottery herein mentioned, or the lives of their nominees ſhall be charged upon the ſeveral new and additional duties by this act granted [on glaſs and ſpirituous liquors.]

249.

249. Sect. 32. Towards raiſing 3,000,000 *l.* any perſons, natives or foreigners, may advance to the caſhier of the Bank, 2,500,000 *l.* in part of the ſaid ſum of three millions, for the abſolute purchaſe of annuities, to commence from the 25th of *March*, 1746, at 4 *l. per annum* for every 100 *l.*

250. Sect. 33. The names of the contributors ſhall be entered in a book, in the office of the accomptant-general of the Bank, to be inſpected *gratis*.

251. Sect. 37. The remaining 500,000 *l.* ſhall be raiſed by a lottery for the purchaſe of annuities at 4 *l. per cent.* to commence from the 25th of *December*, 1746, payable half yearly.

252. Sect. 38. The price of a ticket 10 *l.*

253. Stat. 20 *Geo.* II. *cap.* 3. ſect. 45. The annuities by this act granted in reſpect of the principal ſum of four millions, to be raiſed as herein directed, ſhall be charged on the rates and duties by this act granted, [that is, *on houſes*, *windows*, *or lights.*]

254. Sect. 46. The ſubſcribers ſhall be allowed 4 *l. per cent.* intereſt in annuities, to commence from the 29th of *September*, 1747.

255. Sect. 47. The accomptant-general of the Bank is required, upon the full payment of the ſum of four millions by the contributors, forthwith to place to the credit of every ſuch contributor, an additional capital of 10 *l.* to be added to every ſum of 100 *l.* by them reſpectively advanced for the purpoſes aforeſaid; and ſo in proportion for a greater or leſſer ſum; which ſaid additional capital ſtock ſhall be attended with annuities after the rate of 4 *l. per cent. per annum*, and ſhall be charged upon the rates and duties by this act granted, *&c.*

256. Sect. 49. Monies paid before the times limited, ſhall carry 5 *l. per cent.* intereſt

257. Sect. 58. From and after the ſaid 25th of *March*, 1747, there ſhall be reſerved and ſet apart at the Exchequer, and applied to the *general* or *aggregate fund* in the firſt place, out of the monies to ariſe into the ſaid receipt, of or for the rates and duties by this

this act granted, the yearly ſum of 91,485 *l.* 0 *s.* 6 *d.* three farthings, being the medium of five years, computed from the 29th of *September*, 1741, of what hath been annually produced to the ſaid *general* or *aggregate* fund, purſuant to 7 and 8 *Will.* III. (which is by this act repealed) towards payment of the ſeveral annuities, and other payments charged on the ſaid fund.

258. Sect. 60. Deficiencies of the fund for payment of the annuity of 74,334 *l.* 0 *s.* 11 *d.* to the *South-Sea* company, ſhall be made good out of theſe duties.

259. Sect. 62. Deficiencies of theſe duties, *&c.* ſhall be made good out of the ſinking-fund.

260. Stat. 20 *Geo.* II. *cap.* 10. ſect. 18. All the annuities granted by this act, in reſpect of the principal ſum of one million, to be raiſed for the ſervice of the year 1747, until redemption thereof by parliament, ſhall be charged upon the rates and duties by this act granted [*viz. on coaches and other carriages.*]

261. Sect. 19. The ſaid ſum of 1,000,000 *l.* ſhall be raiſed by lottery for the purchaſe of annuities at 4 *l. per cent.* which are to be charged on the ſaid rates and duties *&c.*

262. Stat 21 *Geo.* II. *cap.* 2. ſect. 10. All the annuities by this act granted, in reſpect of the principal ſum of 6,300,000 *l*, as alſo the additional capital of 10 *l.* in lottery-tickets, herein directed to be added to every 100 *l.* advanced towards raiſing the ſaid ſum of 6,300,000 *l.* until redemption thereof by parliament, ſhall be charged on the ſeveral ſubſidies rates and duties of poundage on all goods and merchandizes to be imported by this act granted

263. Sect. 11. The annuities ſhall commence from *Michaelmas*, 1748, at 4 *l. per cent.*

264. Sect. 12. Caſhier ſhall give notes for delivery of a ticket in the lottery for every 100 *l.* ſubſcribed, which ſhall carry 4 *l. per cent.* intereſt.

265. Sect. 16. Contributors who ſhall advance the purchaſe-money before the times herein limited ſhall be allowed 5 *per cent. per annum.*

266. Stat. 23 *Geo.* II. *cap.* 1. ſect. 1. Whereas there is now due and owing from the public, to the proprietors of certain annuities payable at the Exchequer, the ſum of 312,000*l.* and to the corporation of the governor and company of the Bank of *England*, in their own right, the ſum of 8,486,800*l.* and to the proprietors of certain annuities transferrable there, the ſum of 18,402,472*l.* 0*s.* 10*d.* and the corporation of the united company of merchants of *England*, trading to the *Eaſt-Indies*, the ſum of 3,200,000*l.* and alſo to the governor and company of merchants of *Great Britain*, trading to the *South-Seas*, and other parts of *America*, and for encouraging the fiſhery, commonly called the *South-Sea* company in their own right, and for the uſe and benefit of the proprietors of the annuities, commonly called *The Old South-Sea Annuities*, and *New South-Sea Annuities*, the ſum of 27,302,203*l.* 5*s.* 6*d.* halfpenny, all which ſeveral and reſpective principal ſums do amount in the whole, to the ſum of 57,703,475*l.* 6*s.* 4*d.* half-penny, and are attended with annuities or an intereſt, after the rate of 4*l. per cent. per annum*, redeemable by parliament; and whereas your majeſty hath been pleaſed by your gracious ſpeech to both houſes, to recommend to your dutiful and faithful commons of *Great Britain*, to be watchful to improve any opportunity of putting the national debt, in a method of being reduced with a ſtrict regard to public faith (and private property, and your ſaid dutiful and loyal commons being truely ſenſible, that nothing can ſo effectually contribute to make the trade of this kingdom flouriſh, and render your majeſty's reign glorious to poſterity, as the leſſening the public debts and incumbrances conſiſtent with juſtice and public faith, have reſolved that any perſon or perſons, bodies politic, or corporate, who now are, or hereafter may be intereſted in, or intitled unto any part of the national debt,

debt, redeemable by law, incurred before *Michaelmas*, 1749, which now carries an intereſt after the rate of 4*l. per cent. per annum*, and who ſhall on or before the 28th day of *February*, 1749, ſubſcribe their names, or ſignify their conſent to accept of an intereſt of 3*l. per cent. per annum*, to commence from the 25th day of *December*, 1757, ſubject to the ſame proviſoes, notices and clauſes of redemption, which their reſpective 4*l. per cents.* are now liable to, ſhall in lieu of their preſent intereſt be intitled unto, and receive an intereſt of 4*l. per cent. per annum*, till the 25th of *December*, 1750, and from and after the ſaid 25th day of *December*, 1750, an Intereſt of 3*l.* 10*s. per cent. per annum*, until the ſaid 25th day of *December*, 1757, and no part of the ſame, except what is due to the *Eaſt-India* company, ſhall be liable to be redeemed till after the ſaid 25th day of *December*, 1757, and that all executors, adminiſtrators, guardians and truſtees, may ſubſcribe and ſignify ſuch conſent, for the ſeveral parts of the ſaid debt, for the holding of which their names are made uſe of reſpectively, and that all duties, revenues and incomes, which now ſtand appropriated to the payment of the ſaid intereſt of 4*l. per cent per annum*, reſpectively ſhall continue, and be appropriated and applied to the payment of their reſpective intereſt of 4*l. per cent. per annum*, 3*l.* 10*s. per cent. per annum*, and 3*l. per cent. per annum*, in the ſame manner as the ſame now ſtands, appropriated to the payment of the ſaid 4 *per cent. per annum*, and that the ſurplus of the ſaid funds, after the 25th day of *December*, 1750, ſhall be made part of the ſinking fund, and applied in the ſame manner as the ſurpluſſes of the ſaid funds are now applicable, and alſo that books be opened at the receipt of the Exchequer, at the Bank of *England*, and *South-Sea* Houſe, for receiving the ſaid ſubſcriptions or conſent. They therefore, *&c.* be it enacted, *&c.* that any perſon or perſons, bodies politic, or corporate, who now or hereafter may be intereſted in, or intitled unto one part of the ſaid national debt

redeemable by law, incurred before *Michaelmas*, 1749, amounting in the whole to the ſum of 57,703,475*l.* 6*s.* 4*d.* half-penny, which now carries an intereſt after the rate of 4*l. per cent. per annum*, and who ſhall on or before the ſaid 8th of *February*, 1749, ſubſcribe their names, or ſignify their conſent, to accept of an intereſt of 3*l. per cent. per annum*, to commence from the ſaid 25th of *December*, 1757, ſubject to the ſame proviſoes, notices and clauſes of redemption, which their reſpective 4*l. per cents.* are now liable to, ſhall, in lieu of their preſent intereſt be intitled unto, and receive an intereſt of 4*l. per cent. per annum*, until the ſaid 25th of *December*, 1750; and from and after the ſaid 25th of *December*, 1750, an intereſt of 3*l.* 10*s. per cent. per annum*, until the ſaid 25th day of *December*, 1757, and no part of the ſame except what is due to the *Eaſt-India* company, ſhall be liable to be redeemed, till after the ſaid 25th day of *December*, 1757,

267. Sect. 2. The ſaid annuities are made payable, and transferrable in the ſame manner as the preſent annuities.

268. Sect. 3. Books ſhall be open at the Exchequer, *&c.* until the 28th of *February*, 1749, for ſubſcriptions of the 4 *per cent.*

269. Stat. 23 *Geo.* II. *cap.* 22. ſect. 1. Time given to the 30th of *May*, 1750, to the proprietors of the 4 *per cent.* annuities to ſubſcribe. *&c.* ſuch part of the four *per cent.* annuities as ſhall not be ſubſcribed, to be paid off. His majeſty is impowered to borrow money on the *ſinking fund* to pay off the ſame.

270. Sect. 2. The proprietors ſubſcribing within the time limited, to be allowed an intereſt after the ſeveral rates before mentioned.

271. Sect. 3. Such part of the ſaid annuities as ſhall not be ſubſcribed, ſhall be paid off.

272. Sect. 4. The *Eaſt-India* company not ſubſcribing, ſhall be paid off.

273. Sect. 5. The *Eaſt-India* company ſubſcribing within the time limited, are impowered, with conſent of the treaſury, to borrow 4,200,000*l.* at the

ſeveral

ſeveral rates of intereſt granted by this act, *&c.* The annuities, to be free of taxes, and aſſignable, to be perſonal eſtate, and ſubject to redemption by parliament.

274. Sect. 6 The powers given to the company of raiſing money by bonds, *&c.* is continued; but the money ſhall go to the paying their preſent bond-debt.

275. Sect. 7. Power is given to his majeſty to borrow money on the *ſinking fund*, to pay off unſubſcribed annuities.

276. Sect. 8. The reduced annuities are made payable, and transferrable as the four *per cents*.

277. Sect. 13. All the duties, revenues and incomes, which are now appropriated, ſubject, or applicable to the payment of the ſaid annuities of 4*l. per cent. per annum*, ſhall, from and after the 25th of *December*, 1750, be ſubject and liable to the payment of ſuch of the ſaid annuities of 4*l. per cent. per annum*, as ſhall not be ſubſcribed, in caſe any ſhall be unſubſcribed, and alſo of the ſaid reduced annuities of 3*l.* 10*s. per cent. per annum*, and 3*l. per cent. per ann. &c.*

278. Stat. 24 *Geo.* II. *cap.* 4. ſect. 1. It ſhall be lawful for the commiſſioners of the Treaſury, to iſſue and pay out of any monies to ariſe into the Exchequer, of or for all or any the aids or ſupplies granted for the ſervice of 1751, unto the *South-Sea* company any ſums of money not exceeding the ſum of 2,276,893*l.* 11*s.* 7*d.* being the total principal, remaining due, and payable upon the ſaid unſubſcribed old and new *South-Sea* annuities (after deducting the ſum of 48,121*l.* 16*s.* 4*d.* by this act authorized and directed to be ſubſcribed into the ſaid annuities) at ſuch reſpective time or times, and in ſuch proportions, by payments not leſs than 500,000l. at a time, as they ſhall think moſt proper and convenient, towards redeeming and paying off the ſaid annuities, *&c.*

279. Sect. 18. The *South-Sea* company ſhall deſtribute the ſame among the proprietors.

280. Stat. 25 *Geo.* II. *cap.* 27. Intitled *an act for converting the ſeveral annuities therein mentioned, into ſeveral joint ſtocks of annuities, transferrable at the Bank of England, to be charged on the Sinking Fund; and alſo for conſolidating the ſeveral other annuities therein mentioned, into ſeveral joint Stocks of annuities, transferrable at the South-Sea houſe.* See Bank of *England* par. 153.

281. Stat. 29 *Geo.* II. *cap.* 7. Sect. 1. Contributors who have depoſited 10*l. per cent.* towards raiſing the ſum of two millions, ſhall pay the remainder within the time limited.

282. Sect. 2. Contributors to the ſaid ſum of two millions, who ſhall have ſubſcribed for 400*l.* ſhall be intitled to 300*l.* in annuities, at the rate of 3*l* 10*s. per cent. per annum*, transferrable at the Bank of *England*, and 100*l.* in lottery tickets, to be attended with annuities, after the rate of 3*l. per cent. per annum*, and ſo in proportion for a greater or leſs ſum. Annuities to bear 3*l.* 10*s. per cent.* intereſt, and tickets 3*l. per cent.*

283. Sect. 3. Annuities to commence from the 11th of *February*, 1756, and intereſt on tickets to commence on the 5th of *January*, 1757, payable half-yearly.

284. Stat. 30 *Geo.* II. *cap.* 19. Sect. 32. Whereas ſeveral perſons have ſubſcribed towards raiſing the ſum of 3 millions, for the purchaſe of annuities, after the rate of 3*l. per cent. per annum*, transferrable at the Bank of *England*, and redeemable by parliament, and alſo of annuities for lives, payable for every 100*l.* contributed, after the rate of 1*l.* 2*s.* 6*d. per cent. per annum*, and the ſaid ſubſcribers or contributors have, in purſuance of the reſolutions of the commons of *Great Britain*, depoſited with the caſhier of the Bank of *England*, 15*l.* for every 100*l.* ſubſcribed; be it therefore enacted, *&c.*

285. Sect. 33. Every contributor is intitled to 3*l. per cent.* transferrable annuities, and an annuity for life, of 1*l.* 2*s.* 6*d. per cent.*

286. Sect.

286. Sect. 34. The 3*l. per cent.* annuities to commence from the 5th of *July*, 1757, and to be paid half-yearly; the life annuities to be paid half-yearly alſo.

287. Stat. 31 *Geo.* II. *cap.* 32. ſect. 38. The ſeveral annuities by this act granted, with reſpect to the principal ſum of 5 millions, ſhall be charged upon the ſeveral additional and new rates by this act impoſed upon offices and penſions, and upon houſes and windows, or lights.

288. Sect. 39. Whereas ſeveral perſons have ſubſcribed towards the ſaid ſum of 5 millions; 4 millions 500,000*l.* of which to be attended with annuities at 3*l.* 10*s. per cent. per annum*, and 500,000*l.* reſidue thereof to be raiſed by a lottery, and attended with annuities, after the rate of 3*l. per cent. per annum*, and the ſaid contributors have depoſited 10*l. per cent.* of their ſubſcriptions; it ſhall therefore be lawful for them to advance and pay the remainder of the ſeveral ſums ſo ſubſcribed, at or before the time in this act limited, *&c.*

289. Sect, 41. The annuities to commence from the 5th of *July* 1758. Firſt payment of intereſt to be on the 5th of *January*, 1759, and payable half-yearly; intereſt on lottery tickets to commence on the 5th of *January*, 1759, and afterwards to be paid half-yearly.

290, Sect. 49. Deficiencies ſhall be made good out of the ſinking fund.

291. Stat. 32 *Geo.* II. *cap.* 10. ſect. 19. The ſeveral annuities which by this act are directed to attend, as well the principal ſum of 6 millions 600,000*l.* and the additional capital of 5*l.* to be added to every 100*l.* thereof, as the additional capital which will ariſe by 10*l.* to be given in, and by a lottery ticket to each ſubſcriber, upon every 100*l.* advanced towards the ſaid ſum of 6,600,000*l.* charged on the ſubſidies, rates, and duties by this act granted, on certain goods and merchandizes, to be imported into this kingdom; and an additional inland duty on coffee and chocolate.

292. Sect. 21. Contributors making their payments previous to the times limited, to be allowed intereſt for the ſame, at 3*l. per cent.*

293. Sect. 22. The annuities to commence from the 5th of *January*, 1759.

294. Sect. 23. Subſcribers for every 100*l.* ſubſcribed, intitled to a lottery ticket, to carry 3*l. per cent.*

295. Stat. 32 *Geo.* II. *cap.* 22. (Intitled an act for adding certain annuities, granted in the year 1757, to the joint ſtock of 3 *per cent.* annuities, conſolidated by the acts of the 25th, 28th and 29th *Geo.* II. and for carrying the ſeveral duties therein mentioned to the Sinking-Fund; and for charging the annuities on ſingle lives, granted in 1757, on the produce of the ſaid Fund.) ſect. 1. the ſum of 3,000,000*l.* borrowed by virtue of 30 *Geo.* II. *cap.* 19. Shall be added, by conſent of the proprietors, to the joint ſtock of 3*l. per cent.* conſolidated annuities transferrable at the Bank, and to be paid out of the Sinking-Fund.

296. Sect. 2. Such as ſhall not enter their diſſent before the 20th of *June*, 1759, to be deemed aſſenting thereto.

297, Sect. 3. The life annuities thereupon, ſhall be alſo paid out of the Sinking-Fund.

298. Sect. 4. The life annuities charged on the produce of the additional ſtamp duties, the duty on coals exported, and ſurplus of the new duty on wine licences, and retailing ſpirituous liquors, granted by act 30 *Geo.* II. *cap.* 19, ſhall be made part of the *Sinking Fund.*

299. Stat. 33 *Geo.* 2. *cap* 7 Sect. 23. The ſeveral annuities herein after directed to attend as well the principal ſum of 8 millions, as the additional capital, which will ariſe by 3*l.* to be given in and by a lottery ticket to each ſubſcriber, for and upon every 100*l.* advanced, and paid towards the ſaid ſum of 8 millions, ſhall be charged upon the rates, duties and impoſitions upon malt.

300. Sect.

300. Sect. 24. Contributors who have already made depoſito of 15*l. per cent.* of the ſums ſubſcribed by them, towards the purchaſe of annuities, on the ſum of 8 millions, to be raiſed on the credit of this act, are to make their further payments, *viz.* 10*l. per cent.* by the 26th of *February*, 10*l. per cent.* by the 25th of *March*, 10*l. per cent.* by the 29th of *April*, 10*l*, *per cent.* by the 31ſt of *May*, 10*l. per cent.* by the 3d of *July*, 15*l. per cent.* by the 14th of *Auguſt*, 10*l. per cent.* by the 16th of *September*, and the remaining 10*l. per cent.* by the 29th of *October*, then next.

301. Sect. 25. Contributors paying in the whole of the ſubſcriptions, on or before the 16th of *September*, to be allowed intereſt for the ſame, at the rate of 3*l. per cent. per annum*, from the time of ſuch payment to the 29th of *October*.

302. Sect. 26. The annuities to crry 4*l. per cent.* for 21 years; and after the expiration of that term, 3*l. per cent.* The 4*l. per cent.* annuities, to take place the 5th of *January*, 1760.

303. Sect. 27. Subſcribers for every 100*l.* ſubſcribed, and for which a depoſit of 15*l. per cent*, has been made, are entitled to a lottery-ticket, to carry 4*l. per cent.* for 20 years, to commence on the 5th of *January*, 1761; and after the expiration of that term to carry 3*l*, *per cent.*

304. Sect. 29. Caſhier, on receipt of 15*l. per cent.* of the ſum ſubſcribed, to give a note for the delivery of one lottery ticket for every 100*l.* ſubſcribed.

305. Stat. 33 *Geo.* II. *cap.* 12. [Intitled, An act for adding certain annuities granted in the year 1759, to the joint-ſtock of 3*l. per cent.* annuities, conſolidated by the acts of 25, 28, 29, and 32, of his preſent majeſty's reign, and for carrying the ſeveral duties therein mentioned to the ſinking-fund; and for cancelling ſuch lottery tickets as were made forth in purſuance of an act of the 30th year of his preſent majeſty's reign, and were not diſpoſed of.]

ſect. 1. The principal ſum of 6,600,000*l.* borrowed on the credit of the ſaid act of 32 *Geo.* II. together with the additional capital of 990,000*l.* added thereto, ſhall be made, with conſent of the proprietors, part of the joint-ſtock of 3*l. per cent.* annuities, conſolidated by acts 25, 28, 29, and 32 *Geo.* II. and the charges to be paid out of the ſinking fund.

306. Sect. 2. Proprietors diſſenting, to enter their diſſent on or before the 20th of *June*, 1760.

307. Sect. 3. The duties appropriated for payment of the annuities chargeable on the ſaid principal ſums, to be carried to the ſinking-fund, and made a part thereof, and to be applied accordingly.

Funds.

1. STAT. 7 *Ann. cap.* 7. ſect. 33. The ſubſidies of tonnage and poundage, called *The two third ſubſidies*, and the duties upon coffee, cocoa-nuts, chocolate, cocoa-paſte, tea, nutmegs, cinnamon, cloves, mace, and pictures; and upon muſlins, and the additional duty upon coffee, cocoa-nuts, chocolate, cocoa-paſte, tea, nutmegs, cinnamon, cloves, mace and pictures, mentioned in ſtat. 6 *Ann. cap.* 22. *viz.* thoſe granted by 3 *Ann. cap.* 4. and the further rates impoſed upon white callicoes, porcelain called China wares, and drugs, which are hereby made perpetual, and the half ſubſidies granted by 5 *Ann. cap.* 27, and 6 *Ann. cap.* 19, and hereby made perpetual; *viz.* half the *old ſubſidy*; and all monies which ſhall ariſe of the other half ſubſidies continued by 6 *Ann. cap.* 11. over and above the annuities charged thereon, ſhall be a fund, as well for paying all ſuch monies as ſhall be due for intereſt on the exchequer-bills, and for the premium of 3 *l. per cent. per annum*, and for raiſing the yearly ſum of 200,000 *l.* for paying off the ſaid bills.

A moiety of the inland duty on coffee, and all the duty on chocolate, is appropriated to this fund by 10 Geo. I. cap. 10.

For the further application of this fund, which is now part of the aggregate fund, ſee 1 Geo. I. cap. 12. 3 Geo. I. cap. 8.

2. Stat. 8 *Ann. cap.* 13. ſect. 29. It ſhall be lawful for the commiſſioners of the Treaſury by warrant to charge the undiſpoſed ſurplus at the end of any year of the funds charged with annuities, which ſhall happen

pen to be deficient with the repayment of ſuch money as ſhall be applied to make good ſuch deficiency.

3. Stat. I *Geo.* I. *cap.* 12. ſect. 1. The two thirds ſubſidy, the duties on coffee, tea, *&c.* and the increaſe duties on the ſame; the farther duties on white callicoes; porcelain and drugs, and the half ſubſidy of tonnage and poundage, and the ſurplus ariſing by the other moiety of the ſubſidy of tonnage and poundage granted for 96 years, and charged with 80,000*l.* *per annum* for payment of annuities, as in 7 *Ann. cap.* 7, ſhall be part of the fund by this act eſtabliſhed.

4. Sect. 2. The one half of the old ſubſidy upon import, which by the act 6 *Ann. cap.* 11. was granted for 96 years, ſhall be paid for ever, and ſhall be paid into the Exchequer for the purpoſes in this act.

5. Sect. 3. The additional duties on *French* wines and merchandizes impoſed by the act 7 *Will.* III. *cap.* 20, ſhall be continued for ever; and all the monies which ſhall ariſe of the ſaid additional duties ſhall be paid into the Exchequer for the purpoſes in this act.

6. Sect. 4. All the monies which ſhall arile by the duties which, by an act 25 *Car.* II. *cap.* 7, were granted to his majeſty for ever, called *The plantation duties*, ſhall alſo be paid into the Exchequer for the purpoſes in this act.

7. Sect. 5. The duties which, by the act 9 *Ann. cap.* 12, were impoſed upon hops, either imported into or growing in *Great-Britain*, during four years, ſhall be continued for ever, and ſhall be paid into the Exchequer for the purpoſes by this act appointed.

8. Sect. 7. All the ſurplus-monies which, purſuant to the annuity-act 6 *Ann. cap.* 5, ſhall appear to be in the Exchequer upon the *one third ſubſidy*, granted by 2 and 3 *Ann. cap.* 9, and the additional exciſe, granted by 4 *Will.* and *Mar. cap.* 3, and by 4 *Ann. cap.* 6, which are made a fund for annuities by 4 *Ann. cap.* 6, and upon duties on low wines, granted

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by 12 *Will.* III. *cap.* 11; and the duties on hawkers and pedlars, granted by 9 *Will.* III. *cap.* 27; and ſuch of the duties on ſtamped vellum, *&c.* as were granted by 5 *Will.* and *Mar. cap.* 21, made a fund for annuities by 6 *Ann. cap.* 5, above what ſhall be ſufficient, to diſcharge all monies due upon the annuities charged thereon by the acts 4 *Ann. cap.* 6. 5 *Ann. cap.* 19. and 6 *Ann. cap.* 5, ſhall be applied to the purpoſes in this act.

9. Sect. 8. The *one third ſubſidy* granted by 4 *Ann. cap.* 6, and the duties of exciſe, granted by 4 *Ann. cap.* 6, the duties on low wines, the duties on hawkers and pedlars, the ſaid duties on vellum, *&c.* granted by 5 *Ann. cap.* 19, and the duties of exciſe granted by 4 *Will.* and *Mar. cap.* 3. ſhall be continued for ever.

10. Sect. 9. Where any of the ſaid duties extend to *Scotland*, in all ſuch caſes, the ſame duties ſhall extend to *Scotland* in like manner.

11. Sect. 19. Where any alteration is made by acts now in being, touching any the ſubſidies, *&c.* granted as aforeſaid, the ſame proviſions, *&c.* ſhall be obſerved in relation to the like ſubſidies, *&c.* by this act made perpetual.

32. Sect. 11. All the monies to ariſe by the ſaid ſubſidies, *&c.* ſhall be brought into the Exchequer for the uſes in this act expreſſed. Nevertheleſs, the ſaid duties, *&c.* ſhall be liable to ſuch redemption, as is herein after deſcribed.

13. Sect. 12. All the overplus monies of the five ſeventh parts, and two ſeventh parts, of the exciſe, granted by the act 5 *Will.* and *Mar. cap.* 20, which ſhall remain in the Exchequer, ſhall be ſet apart for the uſes in this act.

14. Sect. 13. All other public monies which, after *Michaelmas*, 1715, ſhall be brought into the Exchequer, not being appropriated, and not ariſing from any branch of the revenue appropriated for the civil government, ſhall be ſet apart for the uſes in this act.

15.

15. Sect. 15. All the ſubſidies, &c. which, by the act 12 *Ann. cap.* 14. were appropriated for paying of exchequer-bills, and the additional revenues by this act granted, and all other monies hereby directed to be brought into the Exchequer, and the overplus monies of the yearly ſum of 700,000 *l.* for the civil-liſt ſhall be one *aggregate fund* for paying the exchequer-bills, &c. and for ſupplying to his majeſty for life the yearly ſum of 120,000 *l.* by quarterly payments, for the ſervice of the houſhold, &c. and alſo for ſupplying the yearly ſum of 54,600 *l.* for ever, by like quarterly payments, in order to raiſe any ſum not exceeding 910,000 *l.* for public ſervices, and for furniſhing the yearly ſum of 270,999 *l.* 7 *s.* for paying off and cancelling the ſaid bills.

The annuities on 910,000 l. *are redeemed by the* South-Sea *company, and the exchequer-bills mentioned in this act are paid and cancelled.*

16. Sect. 11. After reſerving ſufficient to ſatisfy certain allowances to the Bank *(ſince redeemed)* the ſaid yearly ſum of 120,000 *l.* for the ſervice of the king's houſhold, &c. ſhall be paid.

17. Sect. 19. After reſerving ſufficient to ſatisfy all the above mentioned payments, then the ſum of 54,600 *l*, *per annum*, ſhall be ſet apart.

18. Sect. 21. After reſerving ſufficient to ſatisfy the ſaid allowances, &c. and yearly ſums, then the deficiencies for making good the payments on the other funds of the Bank, ſhall be ſatisfied out of the *aggregate fund.*

19. Sect. 22. After reſerving ſufficient to ſatisfy all the ſaid allowances, annual ſums and deficiencies, then the annual ſum of 270,999 *l.* 7 *s.* or ſo much thereof as the monies ariſing by the ſaid *aggregate fund* ſhall produce, ſhall be appropriated for paying the ſaid exchequer-bills.

20. Sect. 23. If the produce of the ſaid *aggregate fund* ſhall, at the end of any year, reckoning from *Michaelmas*, 1715, exceed all the money due at the end

end of every ſuch year, for the purpoſes aforeſaid, the ſurplus ſhall be diſpoſable by parliament.

21. Sect. 24. But in caſe the ſaid *aggregate fund* ſhall, at the end of one year's reckoning, as aforeſaid, be not ſufficient to anſwer the ſaid purpoſes, then ſuch deficiency ſhall be made good out of the next aids to be granted in parliament.

22. Stat. 3 *Geo.* I. *cap.* 8. ſect. 19. The monies appropriated by this act, *viz.* the *aggregate fund* and the duty on houſes mentioned in 7 *Ann. cap.* 7, ſhall be applied in the following manner; that is to ſay, firſt to pay to the Bank the yearly ſum of 100,000*l.* other annuities.

23. Sect. 20. After paying or reſerving ſufficient to pay the ſaid yearly ſums, *&c.* then the yearly ſum of 120,000*l.* for the civil-liſt ſhall be paid to his majeſty out of the monies by this act appropriated; and the Treaſury are to cauſe the ſaid ſum of 120,000*l.* to be iſſued weekly, or as ſoon as the ſame can be ſatisfied, ſo as thereby the ſum of 30,000*l.* due thereon at the end of each quarter, be not exceeded.

24. Sect. 21. After all the before-mentioned payments are ſatisfied, then the ſum of 54,600*l.* ſhall be ſet apart in the Exchequer out of the monies hereby appropriated, and ſhall be applied to anſwer perpetual annuities purchaſed thereon, at the rate of 5*l.* *per cent. per annum.* [*Since redeemed by the* South-Sea *company.*]

25. Sect. 23. After ſatisfying all the payments aforeſaid, the deficiencies, on the original fund of 100,000*l.* *per annum*, payable to the Bank out of the five ſeventh parts of certain duties of exciſe, ſhall be ſatisfied out of the monies by this act appointed; after which the yearly ſum of 4000*l.* ſhall be iſſued to the ſheriffs.

26. Stat. 3 *Geo.* I. *cap.* 7. Sect. 1. For eſtabliſhing a *general fund* for payment of annuities in lieu of lottery orders, on the four acts 9 and 10 *Ann.* and in lieu of the annuities given for the Banker's debt, the funds of the four lottery acts, 9 and 10 *Ann. viz.* the

the cuſtoms upon poundage upon export, granted by 12 *Car.* II. *cap.* 4. and not taken away by ſubſequent ſtatutes and which were revived by 9 *Ann. cap.* 6. (*the firſt lottery act* 9 *Ann.*) and the other duties granted or continued by 9 *Ann. cap.* 6. *viz.* the duty of 12 *d.* a 100 weight upon leather, ſheep-ſkins, or Calf-ſkins, tanned, tawed, or dreſſed, exported; and the duties upon coals exported, and the additional duties upon coals, culm, and cinders, ſhiped and water-born and of coals imported, if any; the additional duty on candles, and the hereditary duty of one *per cent.* on goods exported from ports, capable of a ſhip of 200 tons, to any place of the *Mediterranean*, beyond *Malaga*, in a ſhip not built, *&c.* according to the act, granted by 13 and 14 *Car.* II. *cap.* 11. And an hereditary duty of 5*s.* for every white woollen broad cloath exported, granted by 9 *Ann. cap.* 8. and the yearly ſum of 135,000 *l.* appropriated out of the ſaid duties, by 9 *Ann. cap.* 6. and the ſurplus of the ſame duties, and the weekly ſum of 700 *l.* payable out of the revenues of the Poſt-office, by 6 *Ann. cap.* 10. and the duties upon ſkins and hides, vellum and parchment, granted by 9 *Ann. cap.* 11. And the duties granted by 9 *Ann. cap.* 23. *The ſecond lottery act* 9 *Ann. viz.* on hackney coaches and chairs, on ſtampt vellum, parchment, (*viz.* on bills of lading, almanacks, and licences for ſelling ale or wine) and paper, on cards and dice, and on rock-ſalt exported to *Ireland.* And the yearly fund of 186,670*l.* appropriated by 9 *Ann. cap.* 23. out of the duties granted by the ſaid three acts of 9 *Ann. cap.* 10. 9 *Ann. cap.* 11. and 9 *Ann. cap.* 23. And the duties on the additional hackney chairs, thereunto added by 10 *Ann. cap.* 19. And the other duties granted by 10 *Ann. cap.* 19. (*the firſt lottery act* 10 *Ann.*) *viz.* on ſoap, on paper, paſte-board, mild-board, and ſcale-board, imported; on books, prints, and maps, imported; on paper, paſte-board, mild-board, and ſcale-board, made in *Great-Britain*; on linens, printed, painted, ſtained, or died, imported; on ſilk, calicoes, linens, and ſtuffs,

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printed, ſtained, painted, or dyed in *Great-Britain*; on ſtamped vellum, parchment, and paper, *viz.* ſurrenders, transfers, *&c.* and on pamphlets and newspapers; and the yearly fund of 168,003 *l.* appropriated out of theſe duties by 10 *Ann. cap.* 19. and the duties granted by 10 *Ann. cap.* 26. (*The ſecond lottery act* 10 *Ann.*) *viz.* on dreſſed ſkins, and hides imported; on ſkins and hides tanned, tawed, or dreſſed in *Great-Britain*; on vellum and parchment, on ſtarch, on coffee and tea, [*repealed by* 10 *Geo.* I. *cap.* 10. *and in their place a moiety of the inland duties impoſed by that act on coffee and tea, is ſubſtituted*] on gilt and ſilver wire; and ſtamp duties on policies of inſurance, and the yearly fund of 168,003 *l.* appropriated out of theſe duties by 10 *Ann. cap.* 26. And alſo certain annual ſums amounting to 39,855 *l.* 15 *s.* 7 *d.* one fifth charged upon the hereditary exciſe, by Stat. 12. *Will.* III. *cap.* 12. and 2 *Ann. cap.* 3. in lieu of the *Banker's debt*, ſhall continue for ever; but ſubject to ſuch redemption, as in this act is contained.

27. Sect. 2. All the monies ariſing of the ſaid cuſtoms, *&c.* (except charges of collecting, *&c.*) ſhall be brought into the Exchequer, and entered in books in the offices of the auditor of the receipt, and clerk of the pells, to which books all perſons concerned ſhall have acceſs without fee.

28. Sect. 3. All monies brought into the Exchequer of the ſaid cuſtoms, *&c.* (except charges of applying the ſaid monies) are hereby appropriated for payment of annuities payable by virtue of this act; and the officers of the Exchequer, who ſhall delay payment, or miſapply any of the ſaid monies, ſhall be forejudged from their offices, and rendered incapable to ſerve his majeſty in any affair of truſt or profit, and ſhall alſo be liable to pay double the value of any ſum ſo delayed or misapplied, to the party grieved, to be recovered by action of debt, *&c.*

29. Sect. 4. The yearly ſums of 135,000 *l.* 186,670 *l.* 168,003 *l.* 168,003 *l.* and 39,855 *l.* 15 *s.* 7 *d.* one fifth; adding thereto, the above-mentioned

ſurplus of the duties granted by 9 *Ann. cap.* 6. (which *communibus annis* hath amounted to 27,317 *l.* 11 *s.* 3*d.*) amounting in the whole to 724,849 *l.* 6 *s.* 10 *d.* one fifth, *per annum*, ſhall be a *general fund*; and if all the monies ariſing of the ſaid cuſtoms, *&c.* ſhall not amount to the ſaid ſum of 724,849*l.* 6*s.* 10*d.* one fifth then the monies ſo ariſing ſhall be part of the ſaid *general fund*, for paying the annuities by this act chargeable thereon; and in caſe any deficiency ſhall happen, ſo as within any one year, the ſaid monies ſo ariſing ſhall not amount to 724,849 *l.* 6 *s.* 10*d.* one fifth, then ſo much as ſhall be wanting, ſhall be ſupplied out of the firſt aid to be granted in parliament.

The annuities charged on this general fund called Bank annuities were in great part ſubſcribed into South-ſea ſtock purſuant to 6 *Geo.* I. *cap.* 4. *and the reſt were paid off purſunt to* 13 *Geo.* I. *cap.* 3.

30. Sect. 37. All the ſurplus at the end of every quarter of a year, ending at the four uſual feaſt days of the revenues appropriated by 3 *Geo.* I. *cap.* 8, over and above the payments charged on the *aggregate fund*, and the ſurplus of the revenues appropriated by 3 *Geo.* I. *cap.* 9. over and above the money due *on the South-ſea fund*; and the ſurplus produced by the cuſtoms, *&c.* by this act appropriated to make good the ſaid *general fund*, and ſo much of the *general fund* as ſhall remain after diſcharging the payment directed to be ſatisfied out of the ſame, ſhall attend the diſpoſition of parliament, and be applied according to the acts of parliament, and ſhall be employed for the diſcharging the principal and intereſt of ſuch national debts as were incurred before the 25th of *December* 1716, and are decreed to be national debts, and provided for by act of parliament.

Theſe ſurpluſſes are in ſubſequent acts of parliament called the ſinking fund.

31. Stat. 5. *Geo.* I. *cap.* 3. Sect. 22. The duties on houſes, and other duties, *&c.* by 3 *Geo.* I. *cap.* 8. ſettled.

ſettled for anſwering the purpoſes therein mentioned, which are by this act denominated, *the aggregate fund* ſhall be continued for ever.

32. Stat. 7 *Geo.* I. *cap.* 5. Sect. 29. After paying off ſuch public debts, carrying intereſt at 5 *l. per cent.* or higher intereſt as may be redeemed before Midſummer, 1727, then all the monies of the *ſinking fund* ſhall be applied towards paying off ſuch parts of the capital ſtock belonging to the *South-ſea company*, Bank of *England*, and *Eaſt-India* company, as carry annuities at 4 *l. per cent.* which application, ſhall be made in proportion to the quantities of the capital ſtock which ſhall then appear to belong to every of the ſaid companies.

33. Sect. 66. All the monies of the ſinking fund ſhall be appropriated for diſcharging the principal and intereſt of ſuch national debts as were incurred before the 25th of *December*, 1716, and are declared to be ſuch national debts as may be redeemed and are provided for by parliament.

34. Stat. 9 *Geo.* I. *cap.* 5 Sect. 34. All the monies of the ſurpluſſes call'd the *ſinking fund*, ſhall be appropriated for diſcharging the principal and intereſt of ſuch national debts as were incurred before the 25th of *December* 1716, and are declared to be ſuch national debts as may be redeemed, in ſuch manner as ſhall be directed by future acts of parliament.

35. Stat. 9 *Geo.* II. *cap.* 23, Sect. 17. Duties on retailed ſpirituous liquors, made part of the aggregate fund.

Bankrupts.

1. THE granting commiſſions of bankruptcy ſeems to be derived from the civil law, which conſtituted a guardian to a prodigal in the ſame manner as to a madman *; and ſuch guardian the pretor appointed on the petition or application of relations as well as creditors: but the feudal law, though it admitted of commiſſiones of lunacy *ex neceſſitate*, would allow of none for prodigality, which was not reckoned injurious; becauſe ſuch prodigal could not alien his lands without the leave of his lord; and the condition of a freeman was not to be altered without the crime of felony: but as trade and commerce increaſed, it was found neceſſary, for the ſupport of credit, to introduce ſuch a law amongſt us, and therefore our acts of parliament have confined it to traders and creditors only.

2. Lord *Coke* ſays, that *banque* in *French* ſignifies the ſame as *menſa* in *Latin*; and, that *route* is a ſign or mark, as we ſay a cart-route is a ſign or mark where the cart hath gone; and, that metaphorically a *bankrupt*, or *bankqueroute*, is taken for him that hath

* *Digeſt. lib.* 27. *tit.* 10. Lege duodecim tabularum prodigo interdicitur bonorum ſuorum adminiſtratio; quod moribus quidem ab initio introductum eſt. Sed ſolent hodie prætores, vel præſides, ſi talem hominem invenerint, qui neque tempus, neque finem expenſarum habet, ſed bona ſua dilacerando et diſſipando profudit, curatorem ei dare, exemplo furioſi: et tamdiu erunt ambo in curatione, quamdiu vel furioſus ſanitatem, vel ille ſanos mores receperit; quod ſi evenerit, ipſo jure [id eſt, quando certum eſt, eos neque furere amplius, neque prodigos eſſe] deſinunt eſſe in poteſtatem curatorum.

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wafted his eſtate, and removed his banque ſo as there is but a mention thereof. 4 *Inſt.* 277.

3. But as the firſt bankers came to us from Italy, it ſeems more probable that they brought their name along with them; and conſequently, that the word *bankrupt*, or *bankqueroute*, comes from the Italian *banco rotto*, *broken bench*. The banker himſelf was ſo called from the bench or table which he uſed, with his name inſcribed; and when he failed, his bench was broken. The word *rotto* is what remains in that country of the Latin *ruptus*; all which, both word and metaphor, we preſerve in our language when we ſay that a perſon is *bankrupt*, or that ſuch a one is broken.

4. The firſt act of parliament relative to bankrupts is the 34 and 35 *Hen.* VIII. *cap.* 4, which was entirely altered by the ſubſequent ſtatutes; and therefore no more than the preamble to it is herein inſerted; *viz.* "Where divers and ſundry perſons, "craftily obtaining into their hands great ſubſtance "of other mens goods, do ſuddenly flee to parts un-"known, or keep their houſes, not minding to pay "or reſtore to any their creditors, their debts and "duties, but *at their own wills and pleaſures conſume* "*the ſubſtance obtained by credit of other men, for their* "*own pleaſure and* DELICATE LIVING, *againſt all rea-*"*ſon, equity, and good conſcience:* be it, *&c.*"

5. Stat. 13 *Eliz. cap.* 7. ſect. 1. If any merchant, or oher perſon, uſing or exerciſing the trade of merchandize, by way of bargaining, exchange, rechange, bartry, cheviſance*, or otherwiſe, in groſs, or by retail, or

* *Chevisance* is often mentioned in our ſtatutes, and ſignifies an unlawful or unjuſt bargain, or contract. Thus, the preambles to ſtat. 37 *Hen.* VIII. *cap.* 9, (which is entitled, *A bill againſt uſury*) is in the following words; *viz.* "Where before this time divers "and ſundry acts, ſtatutes, and laws, have been ordained, had, "and made within this realm, for the avoiding and puniſhment "of uſury, being a thing unlawful, and of other corrupt bar-"gains, ſhifts, and *chevisances*," &c. See 13 *Eliz. cap.* 5 and 8; 21 *Jac.* I. *cap.* 17; and 12 *Car.* II. *cap.* 13.

ſeeking his or her trade of living, by buying or ſelling, and being ſubject born of this realm, or of any the queen's dominions, or denizen †, ſince the firſt day of this preſent parliament, hath, or at any time hereafter ſhall depart the realm, or begin to keep his or her houſe or houſes, or otherwiſe to abſent him or her ſelf, or take ſanctuary, or ſuffer him or her ſelf willingly to be arreſted for debt or any other thing not grown or due, for money delivered, wares ſold, or any other juſt or lawful cauſe, or good conſideration or purpoſes, hath or will ſuffer him or her ſelf to be outlawed, or yield him or herſelf to priſon, or depart from his or her dwelling houſe or houſes, *to the intent or purpoſe to defraud*, or hinder, any of his or her creditors, being alſo a ſubject born, as is aforeſaid, of the juſt debt or duty of ſuch creditor or creditors, ſhall be reputed, deemed, and taken for a bankrupt.

6. Sect. 2. The lord-chancellor of *England*, or lord-keeper of the great ſeal of *England*, for the time being, upon every complaint made to him in writing, againſt ſuch perſon or perſons being bankrupt, as is before defined, ſhall have full power and authority, by commiſſion under the great ſeal of *England*, to name, aſſign, and appoint, ſuch wiſe and honeſt, diſcreet perſons, as to him ſhall ſeem good; who, or the moſt part of them, by virtue of this act and of ſuch commiſſion, ſhall have full power and authority to take by their diſcretions ſuch order and direction, with the body and bodies of ſuch perſon, whereſoever he or ſhe may be had, either in his or her houſe

† *Denizen* is an alien enfranchiſed, and made a ſubject by the king's letters patent; and is called *donaiſon*, becauſe his legitimation proceeds *ex donatione regis*, from the king's gift. Such a one is enabled, in many reſpects, to do as the king's native ſubjects do; to purchaſe and poſſeſs lands, and enjoy any office or dignity: but the privileges of a denizen are not ſo extenſive as thoſe of a perſon naturaliſed; for a ſtranger naturaliſed may inherit lands by deſcent, which a denizen cannot; and in the charter of *denization* there is commonly contained ſome clauſe that expreſly abridges him of that full benefit which natural ſubjects enjoy. *Bract. lib.* 5, *cap.* 25: 2 *Inſt.* 741.

or

or houſes, ſanctuary, or elſewhere, as well by impriſonment of his or her body or bodies, as alſo with all his or her lands, tenements, hereditaments, as well copy or cuſtomary-hold, as frechold, which he or ſhe ſhall have in his or her own right, before he or ſhe became bankrupt, and alſo with all ſuch lands, tenements, and hereditaments, as ſuch perſon ſhall have purchaſed, or obtained for money, or other recompence, jointly with his wife, children or child, to the only uſe of ſuch offender or offenders, or of or for ſuch uſe, intereſt, right, or title, as ſuch offender or offenders then ſhall have in the ſame, which he or ſhe may lawfully depart withal, or with any perſon or perſons of truſt to any ſecret uſe of ſuch offender or offenders, and alſo with his or her money, goods, chattels, wares, merchandizes, and debts, whereſoever they may be found or known, and cauſe the ſaid lands, tenements, fees, annuities, offices, goods, chattels, wares, merchandizes, and debts, to be ſearched, viewed, rented, and appraiſed to the beſt value they may, and by deed indented, inrolled in one of the queen's majeſty's courts of record, to make ſale of the ſaid lands, tenements, and hereditaments, and of all deeds, writings, and evidences, touching only the ſame, belonging to ſuch offender or offenders, debtor or debtors; and alſo of all fees, annuities, offices, goods, and chattels, or otherwiſe to order the ſame for true ſatisfaction and payment of the ſaid creditors; that is to ſay, to every of the ſaid creditors a portion, rate like, according to the quantity of his or their debts; and that every direction, order, bargain, ſale, and other thing done by the ſaid perſons ſo authorized, as is aforeſaid, ſhall be good and effectual in the law, to all intents, conſtructions, and purpoſes, againſt the ſaid offender or offenders, debtor or debtors, his or their wife or wives, heir, or heirs, child and children, and ſuch perſon and perſons, as by ſuch joint-purchaſe with the ſaid offender or offenders, as is aforeſaid, have or ſhall have any eſtate or intereſt in

the premiſes, and againſt all other perſon or perſons, claiming by, from, or under ſuch offender or offenders, debtor or debtors, by any act or acts had, made, or done after any ſuch perſon ſhall become bankrupt, as is aforeſaid, and alſo againſt the lords of the manors, whereof the ſaid copy-hold or cuſtomary-lands been holden, their heirs, ſucceſſors, and aſſigns, and every of them.

7. Sect. 3. Provided, that all and every perſon or perſons, to whom any ſuch ſale of copy-hold or cuſtomary-lands or tenements ſhall be made, ſhall, before ſuch time as they, or any of them, ſhall enter or take any profit of the ſame lands or tenements, agree and compound with the lords of the manors, of whom the ſame ſhall be holden, for ſuch fines or incomes, as heretofore hath been moſt uſual and accuſtomed to be yielded or paid therefore; and that, upon every ſuch agreement or compoſition, the ſaid lords, for the time being, at the next court to be holden at or for the ſaid manors, ſhall not only grant unto the ſaid vendee or vendees, upon requeſt, the ſame copy or cuſtomary-lands, tenements by copy of court roll of the ſame manors, for ſuch eſtate or intereſt as to them ſhall be ſo ſold, and reſerving the ancient rents, cuſtoms, and ſervices; but alſo in the ſame court admit them tenants of the ſame copy or cuſtomary lands, as other copy-holders of the ſame manors have been wont to be admitted, and to receive the fealty accordingly.

8. Sect. 4. Provided that ſuch of the ſaid commiſſioners, as ſhall put the ſaid commiſſion in execution, ſhall, upon lawful requeſt to them made by the ſaid bankrupts, not only make a true declaration to the ſame bankrupt, of the employing and beſtowing of their ſaid lands, tenements, offices, fees, goods, chattels, and debts, ſo paid and ſatisfied, to their ſaid creditors, but alſo make payment of the overplus of the ſame, if any ſuch ſhall be, to the ſaid bankrupts, their executors, adminiſtrators, or aſſigns.

9. Sect. 5.

9. Sect. 5. If, after any ſuch act or offence committed, and complaint thereof made to the ſaid commiſſioners ſo to be appointed, as is aforeſaid, or the moſt part of them, by any party grieved, as is aforeſaid, concerning the premiſes, knowing, ſuppoſing, or ſuſpecting any of the goods, chattels, wares, merchandizes or debts of ſuch offender or offenders, debtor or debtors, to be in the cuſtody, uſe, occupying, keeping, or poſſeſſion of any perſon or perſons; or any perſon or perſons to be indebted to any ſuch offender or offenders; do make relation thereof to the ſaid commiſſioners ſo to be appointed, or the moſt part of them: that then the ſaid commiſſioners, or the moſt part of them, ſhall, by virtue hereof, and of the ſaid commiſſion, have full power and authority to ſend for, and call before them, by ſuch proceſs, ways, or means, as they ſhall think convenient by their diſcretions, all and every ſuch perſon or perſons ſo known, ſuſpected, or ſuppoſed to have any ſuch goods, chattels, wares, merchandizes, or debts, in his or their cuſtody, uſe, occupation, keeping, or poſſeſſion, or ſuppoſed, or ſuſpected, to be indebted to ſuch offender or offenders, and, upon their appearance, to examine them, and every of them, as well by their oaths as otherwiſe, by ſuch ways and means as the ſaid commiſſioners, or the moſt part of them, by their diſcretions ſhall think meet and convenient, for and upon the ſpecialty, certainty, true declaration and knowledge of all and ſingular ſuch goods, chattels, wares, merchandizes, and debts of any ſuch offender or offenders, as be ſuppoſed or ſuſpected to be in his or their cuſtody, uſe, occupation, or poſſeſſion, and all ſuch debts as by them ſhall be ſuppoſed or ſuſpected to be owing to any ſuch offender or offenders.

10. Sect. 6. And if any ſuch perſon or perſons, upon examination, do not diſcloſe, and plainly declare and ſhew the whole truth of ſuch things, as he or they ſhall be examined of concerning the premiſes,

to

to his knowledge, or do deny to ſwear, then every ſuch perſon or perſons ſo denying to ſwear, or, being examined, do not declare the plain and whole truth concerning the premiſes, upon due proof thereof to be made before the ſaid commiſſioners, or the moſt part of them ſo to be appointed, as is aforeſaid, by witneſs, examination, or otherwiſe, as to the ſaid commiſſioners, or the more part of them, ſhall ſeem ſufficient in that behalf, ſhall loſe and forfeit double the value of all ſuch goods, chattels, wares, merchandizes, and debts, by them or any of them ſo concealed, and not wholly and plainly declared and ſhewed; which forfeiture ſhall be levied by the ſaid commiſſioners, or the more part of them, of the lands, tenements, hereditaments, goods, and chattels, of ſuch perſon ſo denying to ſwear, or not diſcloſing the whole truth, as is aforeſaid, by ſuch ways and means, and in ſuch manner and form, as is before limited and appointed for the principal offender or offenders, debtor or debtors, and the ſame forfeiture or forfeitures to be diſtributed or employed to and for the ſatisfaction and payment of the debts of the ſaid creditor or creditors, in ſuch like manner, rate, and form, as is before declared, concerning the ordering of the lands and tenements, offices, fees, goods and chattels, of ſuch offender or offenders, debtor or debtors, as is aforeſaid.

11. Sect. 7. If at any time before or after that any ſuch perſon or perſons departeth the realm, or or ſhall keep his or their houſe or houſes, or otherwiſe abſent him or themſelves, or take ſanctuary, or ſuffer him or themſelves to be arreſted, outlawed, or yield his or their bodies to priſon, as is aforeſaid; any perſon or perſons do fraudulently, by covin or colluſion, claim, demand, recover, poſſeſs, or detain any debts, duties, goods, chattels, lands or tenements, by writing, truſt, or otherwiſe, which were or ſhall be due, belonging or appertaining to any ſuch offender or offenders, other than ſuch as he or they can and do prove to be due by right

right and conſcience in form aforeſaid, for money paid, wares delivered, or other juſt conſideration or cauſe reaſonable to the juſt value thereof, before the ſaid commiſſioners ſo to be appointed, or the more part of them, as is aforeſaid; and the ſame to proceed *(bona fide)* without fraud or covin: that then every ſuch perſon or perſons, ſo craftily demanding, claiming, having, poſſeſſing, or detaining any ſuch debt, duty, or other thing, as is aforeſaid, ſhall forfeit and loſe double as much as he or they ſhall ſo claim, demand, detain, or poſſeſs; which ſaid forfeiture ſhall be levied, recovered, and employed in manner and form as is afore rehearſed.

12. Sect. 8. Provided that, if it ſhall fortune the creditors of any ſuch bankrupt, as is aforeſaid, to be ſatisfied and paid off their debts and duties, of or with the proper lands, tenements, goods, chattels, and debts of the ſaid bankrupts, or of or with the ſame and ſome part of the forfeitures of the ſaid double values to be forfeited, as is aforeſaid, and that there ſhall remain an overplus of the ſaid forfeiture of the ſaid double values: that then the one moiety of the ſaid overplus of the ſaid forfeitures of the double values ſo remaining, ſhall be by the ſaid commiſſioners ſo executing the ſaid commiſſion, within convenient time after the levying thereof, paid unto the queen's majeſty, her heirs and ſucceſſors; and the other moiety thereof ſhall be by the ſaid commiſſioners employed and diſtributed to and amongſt the poor within the hoſpitals in every city, town or country, where any ſuch bankrupt ſhall happen to be.

13. Sect. 9. If any ſuch perſon or perſons, which is or ſhall be indebted, do on purpoſe withdraw him or themſelves out of or from his or their uſual manſion, houſe or houſes: that then, upon complaint thereof made to the ſaid commiſſioners, having authority, as is aforeſaid, the ſame commiſſioners, or the more part of them, ſhall, by virtue and authority of this preſent act, have full power and authority

rity to award five proclamations to be made, in the queen's name, upon five ſundry market days, in ſuch places near the place where ſuch bankrupt hath moſt commonly dwelled or made his abode, commanding him or them by the ſame proclamation in the queen's name to return with all convenient ſpeed, and to yield his or their body before the ſaid commiſſioners, having authority as is aforeſaid, or one of them, at ſuch time and place, as by the ſaid proclamation ſhall be appointed: and if the ſaid perſon do not, according to ſuch proclamation, repair and yield his or their body, as is aforeſaid; that then the body of all and every ſuch offender or offenders ſhall be adjudged, taken, and deemed, to all intents and purpoſes, out of the queen's protection: and that alſo every perſon and perſons, that ſhall willingly and wittingly help to hide or convey, or ſhall willingly and wittingly receive, detain, or keep ſecretly any perſon or perſons ſo demanded by proclamation, as is aforeſaid, ſhall ſuffer ſuch pains by impriſonment of his or their bodies, or pay ſuch fine to our ſovereign lady the queen's majeſty, her heirs, and ſucceſſors, as to the ſaid lord-chancellor, or lord-keeper of the great-ſeal, being informed thereof, by the commiſſioners ſo to be appointed as is aforeſaid, or the more part of them, ſhall ſeem meet and convenient, for the ſaid offence or offences.

14. Sect. 10. Provided that, if the creditors of any ſuch offender or offenders, debtor or debtors, which ſo do depart the realm, keep his or their houſe or houſes, or otherwiſe abſent or withdraw him or themſelves into places unknown; or take ſanctuary, or will ſuffer him or themſelves to be arreſted or outlawed, or yield his or their bodies into priſon purpoſely, and for the cauſes aforeſaid, be not fully ſatisfied, or otherwiſe contented, for their debts and duties, by the ways and means before ſpecified and declared; that then the ſaid creditor or creditors, and every of them, ſhall and may have their

their remedy for the recovery and levying of the reſidue of their ſaid debts or duties, whereof they ſhall not be fully ſatisfied, paid, or otherwiſe contented, in form aforeſaid, againſt the ſaid offender or offenders, in like manner and form as they ſhould and might have had before the making of this act: and, that the ſaid creditor or creditors, and every of them, ſhall be only barred and excluded, by virtue of this act, of and for every ſuch part and portion of the ſaid debts and duties, as ſhall be paid, ſatisfied, diſtributed, or delivered unto him or them by order of the ſaid perſons, as is aforeſaid, and of no more portion or parcel thereof.

15. Sect. 11. Provided that, if any perſon or perſons, which is or ſhall be publiſhed and declared to be a bankrupt by virtue of this act, ſhall at any time after purchaſe any lands, tenements, hereditaments, free or copy, offices, fees, goods, or chattels, or that any lands, tenements, hereditaments, free or copy, offices, fees, goods or chattels, ſhall deſcend, revert, or by any means come to ſuch perſon or perſons, being bankrupts, as is aforeſaid, before ſuch time as their debts due to their creditors ſhall be fully ſatisfied and paid, or otherwiſe agreed for: that then the ſaid lands, tenements, hereditaments, as well free as copy, offices, fees, goods, and chattels, ſhall, by virtue of this act, by the ſaid commiſſioners to be appointed, as is aforeſaid, or the more part of them, be bargained, ſold, extended, delivered, and uſed for and towards the payment of the ſaid creditors, in ſuch like manner and form as other the lands, tenements, hereditaments, free or copy, offices, fees goods, and chattels of the ſaid bankrupts, which they had when they were declared firſt to be bankrupts, ſhould or might have been bargained, ſold, diſpoſed, or uſed by virtue of this act.

16. Sect. 12. Provided that this act ſhall not extend to any lands, tenements, or hereditaments, free or copy-hold, which heretofore have been aſſured by any ſuch bankrupt, or hereafter ſhall be aſſured by

by any bankrupt before he become bankrupt; ſo that always ſuch aſſurance be made, *bona fide*, and not to the uſe of the bankrupt himſelf only, or of his heirs; and that the parties, to whoſe uſe ſuch aſſurance hath or ſhall be made, be not, at or before the making of ſuch aſſurance, privy or conſenting to the fraudulent purpoſe of any ſuch bankrupt, to deceive his creditors.

17. Stat. 1* *Jac.* I. *cap.* 15. ſect. 1. For that fraud and deceits, as new diſeaſes, daily increaſe amongſt ſuch as live by buying and ſelling, to the hindrance of traffic and mutual commerce, and to the general hurt of the realm, by ſuch as wickedly and wilfully become bankrupts; and for that the deſcription of a bankrupt in former ſtatutes is not ſo fully expreſſed, nor the power given thereby to the commiſſioners for bankrupts ſo large, as is meet, in ſuch caſes of deceit, to prevent the deceitful actions of bankrupts, *&c.*

13. Sect. 2. For remedy whereof, be it enacted, *&c.* That all and every ſuch perſon and perſons, *uſing*†, or that ſhall uſe, *the trade of merchandize, by way of bargaining, exchange, bartry, cheviſance, or otherwiſe, in groſs or by retail, or ſeeking his, her*, or their *trade of living by buying and ſelling, and being a ſubject born of this realm, or any the* king's *dominions, or denizen*, who, at any time *ſince the firſt day of this preſent parliament, or at any time hereafter, ſhall depart the realm, or begin to keep his or her houſe or houſes, or otherwiſe to abſent him or herſelf, or take ſanctuary, or ſuffer him or herſelf willingly to be arreſted for any debt, or other thing not grown or due for money delivered, wares ſold, or any other juſt or lawful cauſe, or good conſideration or purpoſes, or hath or will ſuffer him*

* This is entitled, *An act for the better relief of the creditors againſt ſuch as ſhall become bankrupts.*

† The words in Italics are in the 13 *Eliz. cap.* 7. See paragraph 5.

or her ſelf to be outlawed, or yield him or her ſelf to priſon, or willingly or fraudulently hath or ſhall procure him or herſelf to be arreſted, or his or her goods, money, or chattels to be attached, or ſequeſtred, *or depart from his or her dwelling-houſe*, or make, or cauſe to be made, any fraudulent grant or conveyance of his, her, or their lands, tenements, goods, or chattels, *to the intent*, or whereby, his, her, or their creditors, being ſubjects born, as aforeſaid, ſhall or may be defeated, or delayed from the recovery of their juſt and true debts; or being arreſted for debt, ſhall, after his or her arreſt, lie in priſon ſix months or more upon that arreſt, or upon any other arreſt or detention in priſon for debt, or lie in priſon ſix months upon ſuch arreſt or detention, ſhall be accounted and adjudged a bankrupt to all intents and purpoſes.

19. Sect. 3. The like commiſſions, orders, benefits, and remedies, which are and be provided and limited by the ſaid former act of parliament (made in 13 *nuper* Eliz. reginæ) againſt any bankrupts therein deſcribed, or for or concerning his, her, or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes, and debts, or any of them, ſhall be had, purſued, taken, and expounded againſt ſuch perſon and perſons, that are herein expreſſed to be bankrupts, his, her, and their lands, tenements, hereditaments, fees, and annuities, offices, goods, chattels, wares, merchandizes, and debts, in ſuch like manner and form, as the ſame ought or might have been, if the perſons herein deſcribed to be bankrupts, had been deſcribed to be bankrupts according to the intent of the ſaid former ſtature.

20. Sect. 4. It ſhall be lawful for any creditors of the ſaid bankrupt, within four months after any ſuch commiſſion ſhall be ſued forth, and until diſtribution ſhall be made by the ſaid commiſſioners for the payment of the bankrupt's debt, as in ſuch caſe hath been

been uſed, to partake and join with the other creditors that ſhall ſue forth any ſuch commiſſion, for ſatisfaction and payment of his, her, or their debts, to him or them owing, without any hindrance, let, or diſturbance of any of the ſame commiſſioners, or of any of the other creditors of any ſuch bankrupts, the ſame creditors ſo coming in to contribute to the charges of the ſaid commiſſion; and that if the creditors come not in within four months, then the commiſſioners to have power to diſtribute.

21. Sect. 5. If any perſon, which hereafter is or ſhall be a bankrupt, by intent of this ſtatute, ſhall convey or procure, or cauſe to be conveyed to any of his children, or other perſon or perſons, any manors, lands, tenements, hereditaments, offices, fees, annuities, leaſes, goods, chattles, or transfer his debts into other men's names, except the ſame ſhall be purchaſed, conveyed, or transferred for or upon marriage of any of his or her children, both the parties married being of the years of conſent, or ſome valuable conſideration, ſhall be in the power and authority of the commiſſioners in this behalf to be appointed, or the more part of them, to bargain, ſell, grant, convey, demiſe, or otherwiſe to diſpoſe thereof, in as ample manner as if the ſaid bankrupt had been actually ſeized or poſſeſſed thereof, or the debts were in his own name of the like eſtate or intereſt to his or their own uſe, at ſuch time as he or ſhe became bankrupt; and that every ſuch grant, bargain, ſale, conveyance, and diſpoſition of the ſaid commiſſioners, or of the greateſt part of them, ſhall be good and available to all intents, conſtructions and purpoſes in the law, againſt the offender or offenders, his heirs, executors, adminiſtrators, and aſſigns, and ſuch children and perſons as ſhall be ſubject to this ſtatute, and againſt all other perſon or perſons claiming by from, or under ſuch offender or offenders, or ſuch ſaid other perſons, to whom ſuch conveyance ſhall be made by the ſaid bankrupt, or by his means or procurement.

22. Sect.

22. Sect. 6. And for that the practices of bankrupts of late are so secret and so subtle, as that they can very hardly be found out or brought to light; and for that the former statute, giving power to the commissioners to examine others than the bankrupts, hath not fully or sufficiently authorized them to examine the said bankrupt upon oath; for remedy whereof be it further enacted by the authority of this present parliament, that the said commissioners may call before them, or the greater part of them, the said bankrupt; and if upon warning left or made in writing at three several times at the dwelling place or house, where the said bankrupt, his wife, or family, for the most part of his abode, did lodge or remain, within one year next before he, she, or they became bankrupt, the said bankrupt shall not appear before the said commissioners, or the greater part of them, that then and from thenceforth it shall be lawful for the greater number of the said commissioners to appoint to proclaim the said party a bankrupt, at such public place or places where the said commissioners or the greater part of them shall think meet, warning him her, or them, to appear before them upon the said commission, at some time appointed; and that if upon five several proclamations made in some public place, the party offending appear not before the said commissioners, and yield his, her, or their bodies to them, or some of them, the said commissioners, or the greater part of them, shall or may award a warrant to such fit person or persons as they think meet to apprehend the body and bodies of the said offender and offenders; and to bring him, her, or them, so offending before the said commissioners, wheresoever the said party or parties offending may be found in place privileged or not, to be examined by the said commissioners, or the greater part of them.

23 Sect. 7. It shall be lawful for the said commissioners, or the greater part of them, to examine the said offender or offenders upon such interrogatories touching the lands, tenements, goods, chattels,

debts, bills, bonds, books of account, and ſuch other things, as may tend to diſcloſe his, her or their eſtate, or their ſecret grants, conveyances, and e-loyning of his, her, or their lands, tenements, goods, money, and debts, as they ſhall think meet.

24. Sect. 8. If therein the offender or offenders ſhall refuſe to be examined, or to anſwer fully to every interrogatory to him to be miniſtred by the ſaid commiſſioners, or the greater part of them, it ſhall be lawful for the ſaid commiſſioners or the greater part of them to commit the ſaid offender or offenders to ſome ſtrait or cloſe impriſonment, there to remain, until he, ſhe, or they ſhall better conform him or herſelf.

25. Sect. 9. If upon his, her, or their examination it ſhall appear that he, ſhe, or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the creditors of the ſaid bankrupt, to the value of 10 *l.* of lawful money of *England*, or above, the party ſo offending ſhall or may thereof be indicted in any of the king's majeſty's courts of record, and being lawfully convicted thereof, ſhall ſtand upon the pillory in ſome public place by the ſpace of two hours, and have one of his ears nailed to the pillory, and cut off.

26. Sect. 10. And whereas by the former ſtatute made in the ſaid thirteenth year of the reign of the late queen *Eliz.* the commiſſioners for bankrupts have power given to them to ſend for ſuch perſon or perſons as the creditors ſhall know, ſuppoſe, or ſuſpect to have, detain, or keep any part of the money, goods, chattels, or debts of the ſaid offender or offenders, or to be indebted to the ſaid offender or offenders to be examined by the ſaid commiſſioners, as by the ſame ſtatute appeareth, but have not good means, or remedy, by impriſonment or other penalty, to procure the perſon ſo ſent for by them to appear before them, nor having appeared before them, to make anſwer upon his oath to ſuch interrogatories as ſhall be miniſtred

miniſtred unto him by the ſaid commiſſioners, for and upon the ſpecialty, certainty, true declaration and knowledge of ſuch lands, tenements, hereditaments, goods, debts, or other things of any ſuch offender or offenders, as be, or ſhall be, or which ſhall be ſuſpected to be in his cuſtody, uſe or poſſeſſion, or in the cuſtody, uſe, or poſſeſſion of any other to his knowledge, and of all debts owing to or for the benefit of ſuch offender or offenders, by himſelf or by any other to his knowledge, ſo as many times a great part of the offender or offenders lands, tenements, hereditaments goods, chattels, or debts, which by the true intent of the ſaid ſtatute ſhould be employed to the ſatisfaction of the creditors of the offender or offenders, are concealed or detained in the hands of ſuch perſon and perſons as refuſe to come, or being come, refuſe to be ſworn before the ſaid commiſſioners, to be examined in that behalf, to the great encouragement of all bankrupts and their wicked confederates and acceſſaries, and to the great hindrance of the juſt remedies of the creditors of the ſaid bankrupts for their true and juſt debts to them owing; for remedy whereof, be it further enacted by the authority aforeſaid, that if any perſon or perſons, being known, ſuppoſed or ſuſpected to have or detain any part of the lands, tenements, or hereditaments, goods, chattels, or debts of the ſaid bankrupt, or to be indebted to, or for the benefit of the ſaid bankrupt, ſhall (after lawful warning to the ſaid perſon or perſons given to come before the ſaid commiſſioners, or the greater part of them, to be examined according to the intent of the ſaid ſtatute) refuſe to come, or ſhall not come before the ſaid commiſſioners at the time appointed, having no lawful impediment (ſuch as ſhall be admitted and allowed of by the ſaid commiſſioners or the more part of them, and which ſhall be then ſignified or made known to the ſaid commiſſioners at the time of their aſſembly) or that any ſuch perſon or perſons, having knowledge or warning of

any other aſſembly or meeting of the ſaid commiſſioners again, ſhall not come and appear before them at ſuch time as he or ſhe lawfully may come, have no ſuch lawful impediments as ſhall be then made known to the ſaid commiſſioners, and by them admitted and allowed of as aforeſaid, or being come before them, ſhall refuſe to be ſworn, and to make anſwer to ſuch interrogatories as ſhall be miniſtred unto him or them according to the true intent and meaning of the ſaid ſtatute made in the ſaid thirteenth year of the reign of our ſaid ſovereign lady queen *Eliz.* or of this preſent act, that then it ſhall be lawful for the ſaid commiſſioners, or for the greater part of them, to commit to ſuch ward and priſon, as to them or to the greater part of them ſhall be thought meet, all ſuch perſon and perſons as ſhall ſo refuſe to be ſworn and make anſwer to ſuch interrogatories as ſhall be ſo miniſtred as aforeſaid; and alſo to direct their warrants to ſuch perſon or perſons as to them or the greater part of them ſhall be thought meet, to apprehend and arreſt ſuch perſon or perſons as ſhall refuſe to appear before them, as aforeſaid, and to bring him, her or them before the ſaid commiſſioners, or the greater part of them, to be examined as aforeſaid; and upon his, her, or their refuſal to come or to be examined before the ſaid commiſſioners as aforeſaid, to commit the ſaid party ſo refuſing to ſuch priſon as the ſaid commiſſioners or the greater part of them ſhall think meet there to remain without bail or mainprize, until ſuch time as the ſaid perſon ſo refuſing to come, or to be ſworn to anſwer before the ſaid commiſſioners, ſhall ſubmit him or herſelf to the ſaid commiſſioners, and be by them examined according to the true intent of the ſaid ſtatute, and of this preſent act.

27. Sect. 11. Provided that ſuch witneſſes as ſhall be ſo ſent for, ſhall have ſuch coſts and charges as the commiſſioners in their diſcretion ſhall think fit; the ſame charges to be rateably born by the creditors of the ſaid bankrupt, according to the proportion of each of their ſeveral debts. And if any perſon or perſons

perſons other than the bankrupt, either by ſubornation, unlawful procurement, ſiniſter perſuaſion, or means of any others, or by his own act, conſent or agreement, ſhall wilfully and corruptly commit any manner of wilful perjury by his depoſition to be taken before the ſaid commiſſioners, or the greater part of them, as aforeſaid; that then the party or parties ſo offending, and all and every perſon and perſons that ſhall unlawfully and corruptly procure any ſuch unlawful, wilful, and corrupt perjury, ſhall or may therefore be indicted in any of the king's majeſty's courts of record, and after his or their conviction thereof, ſhall incur ſuch forfeiture, and receive and ſuffer ſuch pains and puniſhment, as are limited by the Statute made concerning perjury, in the fifth year of the Reign of our late ſovereign lady Queen *Elizabeth*.

28. Sect. 12. 5 *Eliz.* 9. All and every ſum and ſums of money, which ſhall be forfeited by force of this preſent act, ſhall be ſued for and recovered by the ſaid creditors only, or any of them, that will ſue for the ſame, by action of debt, bill, plaint, or information, in any of the king's majeſty's courts of record; and the ſum or ſums of money ſo recovered (the charges of ſuit being deducted) ſhall be diſtributed and divided towards the payment of the ſaid creditors of the bankrupt.

29. Sect. 13. And for that the power and authority given to the commiſſioners of bankrupts touching the debts due to the ſaid bankrupt, is not ſo full and perfect, as that the full benefit thereof in due courſe might be employed to the uſe of the ſaid creditors, as was intended: For remedy therefore be it further enacted by the authority aforeſaid, that the commiſſioners of bankrupts, or the greater part of them ſhall have power to grant and aſſign, or otherwiſe to order or diſpoſe all or any of the debts due or to be due, to and for the benefit of the ſaid bankrupt, by what perſon or perſons ſoever, or in what manner and form ſoever, to the uſe of the creditors of the ſaid

bankrupt, according to the true intent of the ſaid former recited ſtatute of bankrupts; and that the ſame grant, aſſignment, or diſpoſition of the ſaid debts, in form aforeſaid, to be made by the ſaid commiſſioners, or the greater part of them, ſhall ſo veſt the property, right, and intereſt of the ſaid debt and debts, in the perſon or perſons of him, her, or them to whom it ſhall be granted, aſſigned, or ordered by the ſaid commiſſioners, or the greater part of them, as fully to all intents and purpoſes, as if the ſaid bill, bond, bonds, ſtatutes, recognizances, judgment, or contract, whereupon the ſaid debt or debts, deed or deeds, ſhall ariſe or grow, had been made to, or with or for the ſaid perſon or perſons, to whom the ſame ſhall be ſo granted, aſſigned, or diſpoſed by the ſaid commiſſioners; and that after ſuch grant, aſſignment or diſpoſition made of the ſaid debts, that neither the bankrupt, nor any other, to whom any ſuch debt ſhall be due, ſhall have power to recover the ſame, nor to make any releaſe or diſcharge thereof, neither ſhall the ſame be attached as the debt of the bankrupt, or ſuch ſaid other perſon or perſons to whom the ſame ſhall be due, by any other perſon or perſons according to the cuſtom of the city of *London*, or otherwiſe, but that the party or parties to whom the ſame debt ſhall be aſſigned, ſhall have like remedy to recover the ſame, as fully and lawfully, in the name or names of the perſon or perſons to whom the ſame ſhall be ſo granted, aſſigned, or ordered by the ſaid commiſſioners, in all reſpects and purpoſes, as the party himſelf might have had.

30. Sect. 14. Provided that no debtor of the bankrupt be hereby endangered for the payment of his or their debt, truly and *bona fide* to any ſuch bankrupt, before ſuch time as he ſhall underſtand or know that he is become a bankrupt.

31. Sect. 15. Provided alſo, that ſuch of the ſaid commiſſioners, as ſhall put the ſaid commiſſion in execution, ſhall upon lawful requeſt to them made by the ſaid bankrupt, not only make a true declaration

tion to the ſaid bankrupt of the employing and beſtowing of his, her, or their ſaid lands, tenements, and hereditaments, offices, fees, goods, wares, money, chattels, and debts, which ſhall be paid and ſatisfied to their ſaid creditors, as is in like caſe limited and appointed by the ſaid former ſtatute made in the ſaid thirteenth year of the ſaid late queen's majeſty's reign, but alſo make payment of the overplus of the ſame, if any ſuch ſhall be, to the ſaid bankrupts, their executors, adminiſtrators and aſſigns; and that the ſaid bankrupts, after the full ſatisfaction of the ſaid creditors, ſhall have full power and authority to recover and receive the reſidue and remainder of the debts to them owing.

32. Sect. 16. If any action of treſpaſs, or other ſuit ſhall happen hereafter to be brought againſt any commiſſioner authoriſed by the ſtatute made in *decimo tertio* of our late ſovereign lady queen *Elizabeth*, for bankrupts, or any other perſon or perſons having authority by virtue or under the commiſſion, authorizing the ſaid commiſſioner for the doing or executing of any matter, by force of the ſaid ſtatute, or this preſent ſtatute, that the defendant or defendants, in any ſuch action or ſuit, may plead not guilty, or otherwiſe juſtify that the act or thing whereof the plaintiff or plaintiffs complained, was done by authority of the ſaid act made in the thirteenth of *Eliz.* or in this preſent act reſpectively, without expreſſing or rehearſal of any other matter or circumſtance contained in either of the ſaid acts, and without enforcing him or them to ſhew forth their commiſſion authorizing the ſaid act or thing, whereunto the plaintiff ſhall be admitted to reply, that the defendant did the fact ſuppoſed in the declaration of his own wrong, without any ſuch cauſe alledged by the ſaid defendant, whereupon the iſſue in ſuch action ſhall be joined to be tried by verdict of 12 men; and upon the trial of that iſſue, the whole matter to be given on both parties in evidence, according to the

very truth of the ſame; and if verdict npon ſuch iſſue ſhall paſs for the defendant, the defendant to have his coſts.

33. Sect. 17. Provided that after any commiſſion of bankrupts hereafter ſued forth, and dealt in by the commiſſioners, the offender happen to die before the commiſſioners ſhall diſtribute the goods, lands, and debts of the offenders, or any of them, by force of the aforeſaid ſtatute of the thirteenth year of the reign of our late ſovereign lady queen *Elizabeth*, and this ſtatute, or either of them, that then nevertheleſs the ſaid commiſſioners ſhall and may in that caſe proceed in execution, in and upon the ſaid commiſſion, for and concerning the offenders goods, lands, tenements, hereditaments, and debts, in ſuch ſort as they might have done if the party offender were living.

34. * Stat. 21 *Jac.* I. *cap.* 19. ſect. 1. Foraſmuch as daily experience ſheweth, that the number and multitude of bankrupts do increaſe more and more, and alſo the frauds and deceits invented and practiſed for the avoiding and eluding the penalties of the good laws in that behalf already made, and the remedy by them provided: and for that divers defects are daily found in the former ſtatutes made againſt bankrupts, both in a deſcription of a bankrupt, as alſo in the power given to the commiſſioners for the diſcovery and diſtributing the bankrupts eſtate, to the great encouragement of evil minded perſons, the hindrance of traffic and commerce, the great decay, overthrow, and undoing of many clothiers, by whom many thouſands of the natural born ſubjects of this realm be from time to time in all parts of this kingdom ſet on work: all which do tend to the general hurt of this realm: for remedy whereof, be it enacted, *&c.*

* This is intitled, "An act for the further deſcription of a "Bankrupt, and relief of creditors againſt ſuch as ſhall become "bankrupts, and for inflicting corporal puniſhment upon the bankrupts in ſome ſpecial caſes."

that

that all and ſingular the aforeſaid ſtatutes and laws heretofore made againſt bankrupts, and for relief of creditors, ſhall be in all things largely and beneficially conſtrued and expounded for the aid, help, and relief of the creditors of ſuch perſon or perſons as already be, or hereafter ſhall become bankrupt.

35. Sect. 2. And that all and every perſon or perſons uſing, or that ſhall uſe the trade of merchandize, by way of bargaining, exchange, bartering, chevisance, or otherwiſe in groſs, or by retail, or ſeeking his or her living, by buying and ſelling, or that ſhall uſe the trade or profeſſion of a ſcrivener, receiving other men's monies or eſtates into his truſt, or cuſtody, who, at any time after the end of this preſent ſeſſion of parliament, ſhall, either by himſelf, or others by his procurement; obtain any protection or protections, other than ſuch perſon or perſons as ſhall be lawfully protected by the priviledge of parliament, or ſhall prefer or exhibit unto his majeſty, his heirs, or ſucceſſors, or unto any of the king's courts, any petition or petitions, bill or bills, againſt his or her creditor or creditors, or any of them, thereby deſiring or endeavouring to compel or enforce them, or any of them, to accept leſs than their juſt and principal debts, or to procure time, or longer days of payment, than was given at the time of their original contracts, * *or being indebted to any perſon or perſons in the ſum of one hundred pounds or more, ſhall not pay, or otherwiſe compound for the ſame, within ſix months next after the ſame ſhall grow due, and the debtor be arreſted for the ſame, or within ſix months after an original writ ſued out to recover the ſaid debt, and notice thereof given unto him, or left in writing at his or their dwelling houſe, or laſt place of abode*, or being arreſted for debt, ſhall, after his or her arreſt, lie in priſon two

* The ſtat. 10 *Ann. cap*, 15. ſect. 1. herein after mentioned (ſee parag. 63.) reciting theſe very words of this act, repeals the ſame and all other acts as far as they relate to theſe deſcriptions of a bankrupt.

months

months or more, upon that or any other arreſt or detention in priſon for debt; *or being arreſted for the ſum of one hundred pounds or more, of juſt debt or debts, ſhall at any time after ſuch arreſt* eſcape out of priſon, or *procure his enlargement by putting in common or hired bail, ſhall be accounted and adjudged a bankrupt to all intents and purpoſes: and in the ſaid caſes of arreſt*, or lying in priſon for ſuch debt or debts, *or getting forth by common or hired bail, from the time of his or her ſaid firſt arreſt.*

36. Sect. 3. The like commiſſions, orders, benefits, and remedies, which are and be provided and limited by the ſaid former acts of parliament, made in the thirteenth year of the late queen *Elizabeth*, and in the firſt year of the reign of our ſovereign lord the king's majeſty, againſt any bankrupts, in them, or either of them deſcribed, or for or concerning his, her, or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandize, and debts, or any of them, ſhall and may be had, purſued, taken, and expounded againſt ſuch perſon and perſons as are herein and hereby declared, deſcribed, or expreſſed to be bankrupts, and againſt his, her, and their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandize, and debts, in ſuch manner and form, as the ſame ought and might have been, if the perſons herein declared, deſcribed, or expreſſed to be bankrupts, had been by the ſaid ſtatutes, or either of them, deſcribed to be bankrupts, to all intents and purpoſes whatſoever.

37. Sect. 4. The ſame orders, benefits and remedies, which are, and be provided and limited by this preſent act, againſt any bankrupts, in or by this act declared, deſcribed, or expreſſed to be bankrupts, or for or concerning his, her, or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes, and debts, or any of them, or the diſcovery of them, or any of them, ſhall from henceforth be had, purſued, taken, and expounded

expounded againſt ſuch perſon and perſons, as are declared or expreſſed to be bankrupts, by the ſaid former acts of parliament, or either of them, and againſt his, her, and their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes, and debts, in ſuch manner and form, as the ſame ought and might have been, if the perſons in the former ſtatutes, or either of them, deſcribed to be bankrupts, had been mentioned and deſcribed to be bankrupts, in and by this preſent act.

38. Sect. 5. And whereas by the former laws the commiſſioners appointed have power to examine the bankrupt himſelf, and ſuch perſon or perſons as are ſuſpected to have or detain any of the eſtate, goods, or chattels of the bankrupts, but ſome doubt hath been made whether the commiſſioners have power to examine the wives of the bankrupts touching the ſame, by reaſon whereof the bankrupts wives do daily conceal and convey away, and cauſe to be conveyed away much part of their huſbands monies, wares, goods, merchandize, and other eſtate, to perſon or perſons unknown to any but ſuch wives, by reaſon whereof much of the bankrupts eſtate is concealed, and detained from the creditors.

39. Sect. 6. For clearing therefore the ſaid doubt, and avoiding the inconveniencies aforeſaid, be it declared and enacted by the authority aforeſaid, that after ſuch time as any perſon ſhall by the ſaid commiſſioners, executing the ſaid commiſſion, or the greater part of them, be lawfully adjudged or declared to be a bankrupt, the ſaid commiſſioners executing ſuch commiſſion, ſhall have power and authority to examine upon oath the wife and wives of all and every ſuch bankrupt, for the finding out, and diſcovery of the eſtate and eſtates, goods, and chattels of ſuch bankrupt or bankrupts, concealed, kept, or diſpoſed of, by ſuch wife or wives, in their own perſons, or by their own act or means, or by any other perſon or perſons. And that ſhe and they, the ſaid wife and wives, ſhall incur ſuch danger and penalty

nalty for not coming before the ſaid commiſſioners, or for refuſing to be ſworn and examined, or for not diſcloſing the truth upon her or their examination or examinations, as in and by the ſaid former laws, or either of them, is already made and provided againſt any other perſon or perſons in like caſes.

40. Sect. 7. If any bankrupt ſhall upon his or her examination or examinations, to be taken before the ſaid commiſſioners, executing the ſaid commiſſion, be found fraudulently or deceitfully to have conveyed away his or her goods, chattels, lands, tenements, offices, fees, rents, or annuities, or other eſtate, or any part thereof, to the value of twenty pounds or above, to the end and purpoſe to hinder the execution of this ſtatute, or of any other the aforeſaid ſtatutes, or thereby to defraud, delay, or hinder his or her creditors of the ſame, and ſhall not, upon his or her examination, diſcover unto the ſaid commiſſioners, and (if it lie in his or her power) deliver unto the ſaid commiſſioners, all that eſtate, goods, and chattels, ſo fraudulently and deceitfully conveyed away, as aforeſaid, or by him or her, his or her means, kept or detained from the ſaid commiſſioners, or that cannot make it appear unto the ſaid commiſſioners that he or ſhe hath ſuſtained ſome caſual loſs, whereby he or ſhe is diſabled to pay what he or ſhe then owed, ſhall or may be indicted for ſuch fraud or abuſe at the aſſizes or general ſeſſions, to be holden before the judges of aſſize, or juſtices of the peace of the county or place where he or ſhe ſhall become bankrupt: and if upon ſuch indictment or indictments the bankrupt be thereof convicted, he or ſhe ſo convicted ſhall be ſet upon the pillory in ſome public place, for the ſpace of two hours, and have one of his or her ears nailed to the pillory, and cut off.

41. Sect, 8. And for that ſome doubt is conceived, whether the commiſſioners, in caſe of reſiſtance, have power by the former laws to break open, or cauſe to be broken open, the houſe or houſes of ſuch bankrupts,

bankrupts, which if they have not, the remedies by the former laws given will be to little effect; be it therefore enacted, that in execution of the ſaid commiſſion, it ſhall be lawful to and for the ſaid commiſſioners, or the greater part of them, or any other perſon or perſons, officer or officers, by them, or the greater part of them, to be deputed, and appointed by their warrant or warrants, under their hands and ſeals, to break open the houſe or houſes, chambers, ſhops, ware-houſes, doors, trunks, or cheſts of the ſaid bankrupt, where the ſaid bankrupt, or any of his or her goods or eſtate ſhall be, or reputed to be, and to ſeize upon, and order the body, goods, chattels, ready money, and other eſtate of ſuch bankrupt, as by the ſaid former laws are limited and appointed, whether it be by impriſonment of his or her body, or otherwiſe, as to the ſaid commiſſioners, or the greater part of them, ſhall be thought meet.

42. Sect. 9. And for the better diviſion and diſtribution of the lands, tenements, hereditaments, goods, chattels, and other eſtate of ſuch bankrupt, to and amongſt his or her creditors, be it enacted, that the commiſſioners, or the greateſt part of them, ſhall and may examine upon oath, or by any other ways or means, as to them ſhall ſeem meet, any perſon or perſons for the finding out, and diſcovery of the truth and certainty of the ſeveral debts due and owing to all ſuch creditor, and creditors, as ſhall ſeek relief by ſuch courſe of commiſſion to be ſued forth, as aforeſaid: and that all and every creditor and creditors, having ſecurity for his or their ſeveral debts, by judgment, ſtatute, recognizance, ſpecialty with penalty or without penalty, or other ſecurity, or having no ſecurity, or having made attachments in *London*, or any other place, by virtue of any cuſtom there uſed, of the goods and chattels of any ſuch bankrupt, whereof there is no execution or extent ſerved and executed upon any the lands, tenements, hereditaments, goods, chattels, and other eſtate of ſuch bankrupt, before ſuch time as he or ſhe ſhall or

do

do become bankrupt, ſhall not be relieved upon any ſuch judgment, Statute, recognizance, ſpecialty, attachments, or other ſecurity, for any more than a rateable part of their juſt and due debts, with the other creditors of the ſaid bankrupt, without reſpect to any ſuch penalty or greater ſum contained in any ſuch judgment, ſtatute, recognizance, ſpecialty with penalty, attachment, or other ſecurity.

43. Sect. 10. If it ſhall happen, any the lands, tenements, goods, chattels, debts, or other eſtate of any bankrupt, to be extended after ſuch time as he or ſhe is become a bankrupt, by any perſon or perſons, under colour or pretence of his or their being an accomptant, or any way indebted unto our ſovereign lord the king's majeſty, his heirs, or ſucceſſors, that then it ſhall be lawful to and for the ſaid commiſſioners to examine upon oath, whether the ſaid debt were due to ſuch debtor or accomptant, upon any bargain or contract originally made betwixt ſuch accomptant and the ſaid bankrupt, the ſaid debtor and accomptant, and his or their ſervants; and if ſuch bargain or contract was originally made to and with any perſon or perſons than the ſaid debtor or accomptant, or for the uſe and truſt of any other perſon or perſons, then it ſhall and may be lawful to and for the ſaid commiſſioners, or the greater part of them, to order and diſpoſe of all ſuch lands, tenements, hereditaments, goods, chattels and debts, ſo extended as aforeſaid, to and for the uſe of the creditors, which ſhall ſeek relief by the ſaid commiſſion; and that the order and diſpoſition of the ſaid commiſſioners, or the greater part of them, ſhall be good and available againſt the ſaid extent, and againſt all perſons claiming from, by, or under the ſaid extent; and that ſuch perſon and perſons, to whom the ſaid lands, tenements, goods, and chattles ſo extended, ſhall be bargained, ſold, granted or aſſigned by the commiſſioners aforeſaid, or the greater part of them, ſhall have good remedy to have, demand, and recover the ſame,

and

and againſt ſuch perſon and perſons who ſhall detain the ſame.

44. Sect. 11. If at any time hereafter any perſon or perſons ſhall become bankrupt, and at ſuch time as they ſhall ſo become bankrupt, ſhall, by the conſent and permiſſion of the true owner and proprietary, have in their poſſeſſion, order, and diſpoſition, any goods or chattels, whereof they ſhall be reputed owners, and take upon them the ſale, alteration, or diſpoſition, as owners, that in every ſuch caſe, the ſaid commiſſioners, or the greater part of them, ſhall have power to ſell and diſpoſe the ſame, to and for the benefit of the creditors, which ſhall ſeek relief by the ſaid commiſſion, as fully as any other part of the eſtate of the bankrupt.

45. Sect. 12. And for the better payment of debts, and diſcouraging men to become bankrupts; be it further enacted, that the ſaid commiſſioners, or the greater number of them, ſhall have power by virtue of this act, by deed indented and inrolled, within 6 months after the making thereof in ſome of his majeſty's courts of record at *Weſtminſter*, to grant, bargain, ſell, and convey any manors, lands, tenements, or hereditaments, whereof any bankrupt is or ſhall be in any ways ſeized of, any eſtate in tail, in poſſeſſion, reverſion, or remainder, and whereof no reverſion or remainder is or ſhall be in the king's majeſty, his heirs or ſucceſſors, of the gift or proviſion of his majeſty, his progenitors, his heirs, or ſucceſſors, to any perſon or perſons, for the relief and benefit of the creditors of all ſuch bankrupts; and that all and every ſuch grants, bargains, ſales, and conveyances ſhall be good and available in the law to ſuch perſon or perſons, and their heirs, againſt the ſaid bankrupts, and againſt all and every the iſſues of the body of ſuch bankrupts, and againſt all and every perſon and perſons, claiming any eſtate, right, title or intereſt, by, from, or under the ſaid bankrupts, after ſuch time as ſuch perſon ſhall become bankrupt, and againſt all and every other perſon and perſons

whatſoever

whatſoever, whom the ſaid bankrupt by common recovery, or other ways or means, might cut off or debar from any remainder, reverſion, rent, profit, title, or poſſibility, into or out of any the ſaid manors, lands, tenements, or hereditaments.

46. Sect. 13. If any perſon that now is, or hereafter ſhall become a bankrupt, have heretofore granted, conveyed, or aſſured, or ſhall at any time hereafter grant, convey, or aſſure any lands, tenements, hereditaments, goods, chattels, or other eſtate, unto any perſon or perſons, upon condition, or power of redemption at a day to come, by payment of money, or otherwiſe, that it ſhall and may be lawful to and for the ſaid commiſſioners, or the greater part of them, before the time of the performance of ſuch condition, to aſſign and appoint, under their hands and ſeals, ſuch perſon or perſons as they ſhall think fit, to make tender or payment of money, or other performance, according to the nature of ſuch condition, as fully as the bankrupt might have done; and that the ſaid commiſſioners, or the greater part of them, ſhall, after ſuch tender, payment, or performance, have power to ſell and diſpoſe of ſuch lands, tenements, hereditaments, goods, and chattels, and other eſtates ſo granted, conveyed, or aſſured upon condition, to and for the benefit of the creditors, as fully as they may ſell or diſpoſe of any the eſtate of the bankrupt.

47. Sect. 14. Provided that no purchaſer, for good and valuable conſideration, ſhall be impeached by virtue of this act, or any other act heretofore made againſt bankrupts, unleſs the commiſſion to prove him or her a bankrupt, be ſued forth againſt ſuch bankrupt within five years after he or ſhe ſhall become a bankrupt.

48. Sect. 15. Provided further, that this act, and all other acts of parliament heretofore made againſt bankrupts, ſhall extend to ſtrangers born, as well aliens as denizens, as effectually as to the natural born ſubjects, both to make them ſubject to the

the laws as bankrupts, as alſo to make them capable of the benefit of contribution, as creditors by thoſe laws.

49. Stat. 14* *Car.* II. *cap.* 24. ſect. 1. Whereas divers noblemen, gentlemen, and perſons of quality, no ways bred up to trade or merchandize, do oftentimes put in great ſtocks of money into the *Eaſt-India* company, or *Guiney* company, and the fiſhing trade, and ſuch other public ſocieties, and receive the procede of thoſe ſtocks ſometimes in ready monies, ſometime in commodities, which they uſually ſell for money, or exchange again, by which means the trade of thoſe companies is much encouraged, fiſhing and navigation increaſed, and the public good of the whole kingdom is much advanced.

49. Sect. 2. Notwithſtanding which great advantage to the public, there hath been lately ſome opinion conceived, that ſuch perſons may and ought to be made ſubject to the ſtatutes provided againſt bankrupts.

For the better declaring and explaining the law therein, and to the end ſuch perſons may not be diſcouraged in thoſe honourable endeavours for promoting public undertakings; be it declared and enacted, *&c.* that no perſon or perſons whatſoever, who have adventured, or put in, or who hereafter ſhall adventure, or put in any ſum or ſums of money in the ſaid *Eaſt-India* company, or *Guiney* company, or into any joint-ſtock or ſtocks of money by them made or raiſed, or to be made and raiſed, for and towards the maintaining and carrying on the trade by the ſaid *Eaſt-India* company or *Guiney* company managed, or to be managed, or who have formerly, or ſhall hereafter adventure or put in any ſum or ſums of money into any ſtock or ſtocks of money, for the managing and carrying on of the ſaid fiſhing trade, or the trade now called the royal fiſhing trade, and ſhall receive and take his or their part, or dividend of fiſh, goods, or merchandizes, in ſpecie, and ſhall ſell or exchange the ſame, ſhall, for or by reaſon only of ſuch adventure of monies ſo put

* This is intitled, "An act declaratory concerning bankrupts."

into the ſaid Eaſt India company, or Guiney company, or into any ſtock or ſtocks, for and towards the ſaid fiſhing trade, or for or by reaſon only of the receiving and taking ſuch fiſh, goods, and merchandizes, in ſpecie, or ſelling for money, or exchanging the ſame again, be adjudged, taken, eſteemed, or reputed a merchant or trader, within any ſtatute or ſtatutes for bankrupts, or be liable to the ſame.

50. Sect. 3. Provided that every perſon or perſons, who ſhall trade, traffic, or merchandize in any other way or manner, than in the ſaid royal fiſhing trade, or the trade managed by the ſaid Eaſt India company, or the Guiney company, as aforeſaid, ſhall, for and by reaſon of his and their trading, trafficking, and merchandizing, be liable to commiſſion and comiſſions againſt bankrupts, as fully to all intents and purpoſes, and not otherwiſe, as if this act had never been made.

51. Sect. 4. And be it further enacted, That a verdict and judgment in replevin heretofore had or given in the term of *Eaſter*, in the year one thouſand ſix hundred fifty-three, in the King's Bench, betwixt *Phineas Andrews*, plaintiff, *Richard Woolward*, and *William Meggs*, defendants, whereby Sir *John Wolſtenholme*, knight, an adventurer in the ſaid *Eaſt-India* company, was adjudged and found liable to a commiſſion of bankrupts, only for and by reaſon of a ſhare he had in the joint ſtock of the ſaid company, and a pretended ſelling for money part of the return, which he had in ſpecie for his ſaid adventure, ſhall be, and is hereby declared contrary to law, and is hereby reverſed, and made void and null.

52. Sect. 5. Provided always, That no act, ſale, or diſpoſition of any of the lands, tenements, hereditaments, goods, chattels, debts, or credits of the ſaid Sir *John Wolſtenholme*, or any diſtribution of the ſame, or of any money heretofore made or done by the commiſſioners of bankrupts, or any claiming under them, or any of them, by virtue or colour of

any

any commiſſion or commiſſions taken out againſt the ſaid ſir *John Wolſtenholme*; and whereof any perſon or perſons is, by virtue or colour of or under any ſuch act, ſale, or diſpoſition, actually ſeiſed or poſſeſſed, ſhall be hereby impeached, or fruſtrated, but that the ſame be enjoyed for and toward ſatisfaction of the debts, for which the ſame have been diſpoſed or diſtributed.

53. Stat. 7 and 8 *Will.* III. *cap.* 31. ſect. 42. No member of the Bank of *England* ſhall, in reſpect of his ſtock therein only, be, or be adjudged liable to be a bankrupt, within the intent and meaning of all or any the ſtatutes made againſt or concerning bankrupts: and, that no ſtock in the ſaid corporation ſhall be ſubject or liable to any foreign attachment, by the cuſtom of the city of *London*, or otherwiſe.

54. Stat. 8 and 9 *Will.* III. *cap.* 19. ſect. 47. No member of the ſaid corporation [Bank of *England*] ſhall be, or be adjudged liable to be a bankrupt, within the intent and meaning of all or any the ſtatutes made againſt or concerning bankrupts; for or by reaſon of their ſtock or intereſt in the ſaid corporation; and that no ſtock in the ſaid corporation ſhall be ſubject or liable to any foreign attachment by the cuſtom of *London*, or otherwiſe.

55. Stat. 9 and 10 *Will.* III. *cap.* 44. ſect. 74. No member of any ſociety or company [*Eaſt-India* company] to be erected in purſuance of this act, ſhall, in reſpect of his ſtock therein only, be, or be adjudged liable to be a bankrupt, within the intent or meaning of all or any the ſtatutes made againſt or concerning bankrupts; and that no ſtock in ſuch ſociety or company ſhall be ſubject or liable to any foreign attachment, by the cuſtom of the city of *London*, or otherwiſe.

56. Stat. 4 and 5 *Ann. cap.* 17. *Continued for five years, from* April, 1709, *by* 7 Ann. cap. 25, *ſect.* 4.

57. Stat. 5 *Ann. cap.* 13. ſect. 25. No member of the Bank of *England* ſhall, for or by reaſon of

any of the matters or things in this act contained, be disabled from being a member of parliament, or adjudged liable to be a bankrupt within the intent and meaning of all or any the statutes made against or concerning bankrupts; and that the said fund or allowance, after the rate of four pounds and ten shillings *per centum per annum*, shall not be subject or liable to any foreign attachment by the custom of the city of *London*, or otherwise.

58. Stat. 5 *Ann. cap.* 22. An act to explain and amend an act of the last session of parliament, for preventing frauds frequently committed by bankrupts. *To continue only for two years.*

59. Stat. 7 *Ann. cap.* 7. sect. 59. No member of the Bank of *England* shall, for or by reason of any the matters or things in this act contained, be disabled from being a member of parliament, or be adjudged liable to be a bankrupt, within the intent and meaning of all or any the statutes made against or concerning bankrupts.

60. Stat. 7* *Ann. cap.* 12. sect. 5. No merchant or other trader whatsoever, within the description of any of the statutes against bankrupts, who hath or shall put himself into the service of any such embassador or public minister, shall have or take any manner of benefit by this act.

61. Stat. 7 *Ann. cap.* 25. sect. 4. The stat. 4 *Ann. cap.* 17, and 5 *Ann. cap.* 22, concerning bankrupts, continued from the 25th of *April*, 1709, for five years, and from thence to the end of the next session of parliament.

62. Stat. 9 *Ann. cap.* 21. sect. 41. No member of the company [*South-Sea* company] to be erected in pursuance of this act, shall, in respect of his or her being a member, governor, director, or manager thereof, or having any stock therein only, or by

* This is intitled, "An act for preserving the privileges of embassadors, and other public ministers of foreign princes and states."

reason

reaſon of any other matter or thing in this act contained, be diſabled from being or continuing a member of parliament; nor ſhall be, or be, adjudged liable to be a bankrupt, within the intent or meaning of all or any the ſtatutes made againſt or concerning bankrupts: and no ſtock in the ſaid intended company ſhall be ſubject or liable to any foreign attachment, by the cuſtom of the city of *London*, or otherwiſe.

63. Stat. 10 *Ann. cap.* 15. ſect. 1. *Repeals part of the deſcription of a bankrupt in* 21 Jac. I. cap. 19. ſect. 1. See paragraph 35.

64. Sect. 3. And whereas a doubt has ariſen upon an act made in the fourth year of her majeſty's reign, intitled, *An act to prevent frauds frequently committed by bankrupts*, whether the diſcharge of a bankrupt, by virtue of that act, ſhould be conſtrued to diſcharge the partners of ſuch bankrupt from the ſame debt; be it therefore further enacted and declared, by the authority aforeſaid, that, by the diſcharge of any bankrupt or bankrupts, by force of the ſaid act, or any other acts relating to bankrupts, from the debts by him, her, or them, due and owing, at the time that he, ſhe, or they, did become a bankrupt, ſhall not be conſtrued, nor was meant or intended to releaſe or diſcharge any other perſon or perſons, who was or were partner or partners with the ſaid bankrupt in trade, at the time he, ſhe, or they became a bankrupt, or then ſtood jointly bound, or had made any joint contract together with ſuch bankrupt or bankrupts, for the ſame debt or debts, from which he was diſcharged, as aforeſaid, but that, notwithſtanding ſuch diſcharge, ſuch partner and partners, joint obligor and obligors, and joint contractors with ſuch bankrupt and bankrupts, as aforeſaid, ſhall be and ſtand chargeable with, and liable to pay ſuch debt and debts, and to perform ſuch contracts, as if the ſaid bankrupt and bankrupts had never been diſcharged from the ſame.

65. Stat. 3 *Geo.* I. *cap.* 8, ſect. 43. No member of the corporation of the governor and company of the Bank of *England*, for or by reaſon of any the matters or things in this act contained, ſhall be diſabled from being a member of parliament, or be adjudged liable to be a bankrupt, within the intent and meaning of all or any of the ſtatutes made againſt or concerning bankrupts; any law, ſtatute, or proviſion to the contrary in any wiſe notwithſtanding.

66. Stat. 3 *Geo.* I. *cap.* 9. ſect. 7. And be it enacted, by the authority aforeſaid, That no governor, ſub-governor, deputy governor, or member of the ſaid company, by reaſon of his being a member of the ſaid company, or of any matter or thing in this act contained, be now, or at any time hereafter, diſabled from being or continuing, or from being elected, or ſerving as a member of parliament; nor ſhall be, or be adjudged liable to be a bankrupt within the intent and meaning of all or any the ſtatutes made againſt or concerning bankrupts.

67 Stat. 3 *Geo.* I. *cap.* 12. Which is intitled, An act to impower commiſſioners in commiſſions of bankrupts, iſſued ſince the four and twentieth day of *June*, one thouſand ſeven hundred and ſix, and on or before the ſix and twentieth day of *June*, one thouſand ſeven hundred and ſixteen, to make certificates for bankrupts, and the lord-chancellor, lord-keeper, commiſſioners of the great-ſeal, or two judges, to confirm the ſame, notwithſtanding the acts of the fourth and fifth, and the fifth of queen *Anne*, are expired; and for continuing a clauſe in a former act for adjuſting accounts between bankrupts and their debtors.

68. Stat. 5 *Geo.* I. *cap.* 19. ſect. 27. No perſon, in reſpect of his being governor, ſub-governor, deputy-governor, director, manager, or a member of the *South-Sea* company, or having any ſtock or ſhare therein, or by reaſon of his being named or acting as a manager, director, or otherwiſe, for taking the

the ſaid ſubſcriptions, or for any other matter or thing to be by him done or performed by or in purſuance of this act only, ſhall be, or be adjudged liable to be a bankrupt, within the intent or meaning of all or any of the ſtatutes made againſt or concerning bankrupts; and that the ſtock in the ſaid company ſhall not be ſubject and liable to any foreign attachment by the cuſtom of the city of *London*, or otherwiſe.

69. Stat. 5 *Geo.* I. *cap.* 24. ſect. 1. Whereas commiſſions of bankrupts were iſſued againſt ſeveral perſons, not long before the expiration of the ſeveral ſtatutes made in her late majeſty's reign, for preventing frauds frequently committed by bankrupts, and ſuch perſons have been declared bankrupts by the commiſſioners by ſuch commiſſions authorized; and yet ſuch bankrupts, by reaſon of the expiration of the ſaid ſtatutes, have not only refuſed to ſurrender themſelves to the commiſſioners, and to diſcover and deliver up their eſtates and effects to the ſaid commiſſioners, for the benefit of their creditors, but have carried away and concealed the ſame, in ſuch manner that the ſaid commiſſioners have not been able to ſeize the ſame, to the manifeſt wrong and injury of their creditors, and to the great diſcouragement of trade: and whereas many evil-minded perſons have, ſince the expiration of the ſaid ſtatutes, bought and taken up on truſt and credit, divers great quantities of goods, wares, and merchandizes, and have thereby and otherwiſe contracted great debts; and, having gotten ſuch goods and effects into their cuſtody, have ſold the ſame for leſs than the value thereof, and thereby raiſed ready money, and have withdrawn themſelves from their uſual places of abode with their effects, into the *Mint*, and other ſecret or pretended privileged places, in order to oblige their creditors to accept of ſuch compoſition for their reſpective debts, as ſuch evil minded perſons think fit to give; or have carried away their effects beyond the ſeas, whereby

their creditors have been totally deprived of their debts: And whereas many perſons have and do daily become bankrupt, not ſo much by reaſon of loſſes and unavoidable misfortunes, as to the intent to oblige their creditors to accept ſuch their unjuſt profers and compoſition, and to defraud and hinder their creditors of their juſt debts; be it therefore enacted *&c. to continue for ſeven years.*

70. Stat. 6 *Geo.* I. *cap.* 4. Sect. 55. No member of the *South-Sea* company, in reſpect of his ſhare or ſhares in the ſaid capital or increaſed capital ſtock, ſhall be, or be adjudged liable to be a bankrupt within the intent and meaning of all or any of the ſtatutes made againſt or concerning bankrupts; and that no ſtock in the ſaid company ſhall be ſubject and liable to any foreign attachment by the cuſtom of the city of *London* or otherwiſe.

71. Stat. 6 *Geo.* I. *cap.* 18. Sect. 10. No perſon which ſhall be governor, director, or other officer of either of the *Royal Exchange* aſſurance, and *London* aſſurance corporations ſhall for that cauſe only be diſabled from being a member of parliament; nor ſhall in reſpect of ſuch ſhare or ſhares be, or be adjudged liable to be a bankrupt, within the intent and meaning of all or any the ſtatutes made againſt or concerning bankrupts. And no ſtock in the ſaid reſpective corporations ſhall be ſubject or liable to any foreign attachment, by the cuſtom of *London* or otherwiſe.

72. Stat. 6 *Geo.* I. *cap.* 22. Intitled an act for relief of inſolvent debtors, and for the more eaſy diſcharge of Bankrupts out of execution, after their certificates are allowed.

73. Stat. 7 *Geo.* I. *cap.* 31. Intitled An act for explaining and making more effectual the ſeveral acts concerning bankrupts.

Whereas merchants and other traders in goods, have been often obliged, and more eſpecially of late years, to ſell and diſpoſe of their goods and merchandizes to ſuch perſons as have occaſion for the ſame,

upon

upon truſt or credit, and to take bills, bonds, promiſſory notes, or other perſons ſecurities for their monies, payable at the end of three, four, or ſix months, or other future days of payment, and the buyers of ſuch goods becoming bankrupts, and commiſſions of bankruptcy being taken out againſt them before the money upon ſuch bonds, notes, or other ſecurities became payable, it hath been a queſtion, whether ſuch perſons giving ſuch credit on ſuch ſecurities, ſhould be let in to prove their debts, or be admitted to have any dividend or other benefit by the commiſſion, before ſuch time as ſuch ſecurities became payable, which hath been a great diſcouragement to trade, and great prejudice to credit within this realm; for remedy whereof, be it enacted and declared by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal and commons in this preſent parliament aſſembled, and by authority of the ſame, that all and every perſon and perſons who have given credit, or at any time or times hereafter ſhall give credit, on ſuch ſecurities as aforeſaid, to any perſon or perſons, who is, are, or ſhall become bankrupts, upon a good and valuable conſideration, *bona fide*, for any ſum or ſums of money, or other matter or thing whatſoever, which is, or ſhall not be due or payable at or before the time of ſuch perſon's becoming bankrupt, ſhall be admitted to prove his, her, and their ſeveral and reſpective bills, bonds, notes, or other ſecurities, promiſe, or agreement for the ſame, in like manner as if they were made payable preſently, and not at a future day; and ſhall be intitled unto, and ſhall have and receive a proportionable part, ſhare, and dividend of ſuch bankrupts Eſtate, in proportion to the other creditors of ſuch bankrupt, deducting only thereout a rebate of intereſt, and diſcounting ſuch ſecurities payable at future times, after the rate of 5*l.* *per cent.* *per annum*, for what he ſhall ſo receive, to be computed from the actual payment thereof, to the time ſuch debt, duty, or ſum of money ſhould or would

would have become due and payable in and by ſuch ſecurities, as aforeſaid.

74. All and every perſon or perſons, who now are or ſhall become bankrups, ſhall be diſcharged of and from all and every ſuch bond, note, or other ſecurity, as aforeſaid, and ſhall have the benefit of the ſeveral ſtatutes now in force againſt bankrupts, in like manner, to all intents and purpoſes, as if ſuch ſum of money had been due and payable before the time of his becoming a bankrupt.

75. Stat. 8 *Geo.* I. *cap.* 20. Sect. 26. Contractors for circulating *Exchequer* bills, or any of them, ſhall not, for that cauſe only, be diſabled from being a member or members of parliament, or be adjudged liable to be a bankrupt or bankrupts, within the intent or meaning of all or any of the ſtatutes made againſt or concerning bankrupts.

76. Stat. 9 *Geo.* I. *cap.* 18. Sect. 53. Contractors for circulating the bills to be iſſued by this act, or any of them, ſhall not, for that cauſe only, be diſabled from being a member or members of parliament, or be adjudged liable to be a bankrupt or bankrupts within the intent or meaning of all or any the ſtatutes made againſt or concerning bankrupts.

77. Stat. 9 *Geo.* I. *cap.* 28. Intitled, An act for more effectual execution of juſtice in a pretended privileged place in the pariſh of St. *George* in the county of *Surry*, commonly called the *Mint*, and for bringing to ſpeedy and exemplary juſtice ſuch offenders as are therein mentioned; and for giving relief to ſuch perſons as are proper objects of charity and compaſſion there.

Sect. 20. Provided that no perſon, againſt whom any commiſſion of bankrupt hath been awarded, and whoſe certificate hath not been allowed, ſhall have, or be intitled to any ſuch diſcharge (*viz.* from any debts or arreſts) to receive any benefit therefrom.

78. Stat. 11 *Geo.* I. *cap.* 17. Sect. 17. Contractors for circulating the Exchequer bills, to be made forth in purſuance of this act, or any of them, ſhall not

not for that cauſe only be diſabled from being a member or members of parliament, or be adjudged liable to be a bankrupt or bankrupts within the intent or meaning of all or any the ſtatutes made againſt or concerning bankrupts.

79. Stat. 11 *Geo.* I. *cap.* 21. Sect. 21. [An act for the relief of inſolvent debtors,] no perſon, againſt whom a ſtatute of bankrupt hath been awarded, ſhall receive any benefit or advantage by this act, except for ſuch debts as have been contracted ſince the date of ſuch ſtatute.

80. Stat. 11 *Geo.* I. *cap.* 29. Sect. 1. Bankrupts act of 5 *Geo.* I. continued for one year.

81. Stat. 12 *Geo.* I. *cap.* 4. Sect. 36. Contractors for circulating the Exchequer bills to be made forth by virtue of this act, or any of them, ſhall not for that cauſe only, be diſabled from being a member or members of parliament, or be adjudged liable to be a bankrupt or bankrupts, within the intent and meaning of all or any the ſtatutes made againſt or concerning bankrupts.

82. Stat. 13 *Geo.* I. *cap.* 27. Sect. 1. Bankrupts act of 5 *Geo.* I. continued for one year.

83. Stat. 5 *Geo.* II. *cap.* 30. Sect. 1. Whereas commiſſions of bankrupt have been iſſued againſt ſeveral perſons, not long before, and ſince the expiration of the ſtatute made in the fifth year of his late majeſty's reign, intitled "An act for the better preventing frauds committed by bankrupts," and ſuch perſons have been declared bankrupts by the commiſſioners by ſuch commiſſions authorized; and yet ſeveral of ſuch bankrupts, by reaſon of the expiration of the ſaid ſtatute, have not only refuſed to ſurrender themſelves to the commiſſioners and to diſcover and deliver up their eſtates and effects to the ſaid commiſſioners, for the benefit of their creditors, but have carried away and concealed the ſame, in ſuch manner, that the ſaid commiſſioners have not been able to ſeize the ſame, to the manifeſt wrong and injury of their creditors, and to the great diſcouragement of trade; and whereas many evil-minded

minded perſons have, ſince the expiration of the ſaid ſtatute, bought and taken upon truſt and credit, divers great quantities of goods, wares, and merchandizes, and have thereby, and by their extravagant manner of living, and otherwiſe, contracted great debts; and having gotten ſuch goods and effects into their cuſtody, have ſold or pawned the ſame for leſs than the value thereof, and thereby raiſed ready money; and have withdrawn themſelves from their uſual places of abode with their effects, into ſecret places, in order to oblige their creditors to accept of ſuch compoſition for their reſpective debts, as ſuch evil-minded perſons think fit to offer; or have carried away their effects beyond the ſeas, whereby their creditors have been totally deprived of their debts; and whereas many perſons have and do daily become bankrupts, not ſo much by reaſon of loſſes and unavoidable misfortunes, as to the intent to oblige their creditors to accept ſuch their unjuſt profers and compoſition, and to defraud and hinder their creditors of their juſt debts; therefore to remedy the ſaid abuſes, and to ſupply the defects and inconveniencies of former laws relating to *bankrupts*, be it enacted *&c.* that if any perſon or perſons who ſince the fourteenth day of May, 1729, hath or have become *bankrupt*, or who ſhall at any time hereafter, during the continuance of this act become bankrupt, within the intent and meaning of the ſeveral ſtatutes made and now in force concerning bankrupts, or any of them, and againſt whom a commiſſion of bankrupt, under the great ſeal of *Great-Britain*, hath, ſince the ſaid 14th day of May, 1729, been awarded and iſſued out, or ſhall at any time hereafter be awarded and iſſued out, whereupon the perſon or perſons, againſt whom ſuch commiſſion hath iſſued, or ſhall iſſue, hath or have been or ſhall be declared bankrupt or bankrupts, ſhall not, within forty-two days, after notice thereof in writing to be left at the uſual place of abode of ſuch perſon or perſons, or perſonal notice, in caſe ſuch perſon or perſons be then in priſon,

and

and notice given in the *London Gazettee*, that ſuch commiſſion or commiſſions is, are, or have been iſſued, and of the time and place of a meeting of the commiſſioners therein named, or the major part of them, ſurrender him, her, or themſelves to the ſaid commiſſioners named in the ſaid commiſſion, or the major part of them, and ſign or ſubſcribe ſuch ſurrender, and ſubmit to be examined from time to time upon oath, or being of the people called *Quakers*, upon the ſolemn affirmation by law appointed for ſuch people, by and before ſuch commiſſioners or the major part of them, by ſuch commiſſion authorized, and in all things conform to the ſeveral ſtatutes already made and now in force concerning bankrupts; and alſo upon ſuch his, her or their examination, fully and truly diſcloſe and diſcover all his, her, or their effects and eſtate real and perſonal, and how, and in what manner, to whom, and upon what conſideration, and at what time or times he, ſhe, or they have or hath diſpoſed of, aſſigned, or transferred any of his, her, or their goods, wares, merchandizes, monies, or other eſtate and effects, and all books, papers, and writings relating thereunto, of which he, ſhe, or they was or were poſſeſſed, or in or to which he, ſhe, or they was or were any ways intereſted or intitled, or which any perſon or perſons had or hath, or have had in truſt for him, her, or them, or for his her, or their uſe, at any time before or after the iſſuing of the ſaid commiſſion, or whereby ſuch perſon or perſons, or his, her, or their family or families, hath, or have, or may have or expect any profit, poſſibility of profit, benefit, or advantage whatſoever, except only ſuch part of his, her, or their eſtate or effects, as ſhall have been really and *bona fide* before ſold or diſpoſed of in the way of his, her, or their trade and dealings; and except ſuch ſums of money, as ſhall have been laid out in the ordinary expence of his, her, or their family or families; and alſo, upon ſuch examination, deliver up unto the ſaid commiſſioners by the ſaid commiſſion authorized, or

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the major part of them, all ſuch part of his, her, or their, the ſaid bankrupt's goods, wares, merchandizes, money, eſtate, and effects, and all books, papers, and writings, relating thereunto, as at the time of ſuch examination ſhall be in his, her, or their poſſeſſion, cuſtody, or power, (his, her, or their neceſſary, wearing apparel, and the neceſſary wearing apparel of the wife and children of ſuch bankrupt, only excepted) then he, ſhe, or they, the ſaid bankrupt or bankrupts, in caſe of any default and wilful omiſſion in not ſurrendering and ſubmitting to be examined, as aforeſaid, or in caſe he, ſhe, or they ſhall remove, conceal, or embezel, any part of ſuch his, her, or their eſtate, real and perſonal, to the value of 20 *l.* or any books of account, papers, or writings relating thereto, with an intent to defraud his, her, or their creditors (and being thereof lawfully convicted by indictment or information) ſhall be deemed and adjudged to be guilty of felony, and ſhall ſuffer as felons without benefit of clergy, or the benefit of any ſtatute made in relation to felons; and in ſuch caſes ſuch felons goods and eſtate ſhall go and be divided among the creditors ſeeking relief under ſuch commiſſion.

84. Sect. 2. Provided that the ſaid commiſſioners, authorized as aforeſaid, ſhall appoint, within the ſaid forty-two days, ſo appointed, as aforeſaid, for the bankrupt to ſurrender and conform, as aforeſaid, not leſs than three ſeveral meetings for the purpoſes aforeſaid, the laſt of which ſhall be on the forty-ſecond day hereby limited for ſuch bankrupt's appearance, except on commiſſions already iſſued ſince the laſt fourteenth day of *May* 1729, where the perſon or perſons againſt whom ſuch commiſſion iſſued has or have before ſurrendered and ſubmitted to be examined; in which caſe the ſaid commiſſioners, authorized as aforeſaid, ſhall appoint only one ſitting more for the purpoſes aforeſaid, unleſs the aſſignee, or aſſignees of the eſtate of ſuch bankrupt ſhall think more ſittings neceſſary, and deſire the ſame, and three

three weeks notice at leaſt ſhall be given in the *London Gazette* of the time and place of ſuch meetings.

85. Sect. 3. Provided that it ſhall and may be lawful to and for the lord-chancellor, or lord-keeper, or commiſſioners for the cuſtody of the great-ſeal of *Great-Britain* for the time being, to enlarge the time for ſuch perſon or perſons, ſurrendring him, her, or themſelves, and diſcloſing and diſcovering his, her, or their eſtate and effects, as aforeſaid, as the ſaid lord-chancellor, lord-keeper, or ſuch commiſſioners, ſhall think fit, not exceeding fifty days, to be computed from the end of the ſaid forty-two days: ſo as ſuch order for enlarging the time be made by the ſaid lord-chancellor, lord-keeper, or ſuch commiſſioners, ſix days at leaſt before the time on which ſuch perſon or perſons was or were ſo to ſurrender him, her, or themſelves, and make ſuch diſcovery, as aforeſaid.

86. Sect. 4. Every ſuch bankrupt or bankrupts, as aforeſaid, after any aſſignee or aſſignees, of his, her, or their eſtate and effects, ſhall be choſen and appointed, as herein after mentioned, ſhall be, and is, and are hereby required forthwith to deliver up on oath, or (one of the people called Quakers) upon ſolemn affirmation before one of the maſters of the high court of chancery, or before any juſtice of the peace within his reſpective juriſdiction (which oath or affirmation they are hereby impowered to adminiſter unto ſuch aſſignee or aſſignees) all his, her, or their books of accompts, papers, and writings not ſeized by the meſſenger of the ſaid commiſſion, or not before delivered up to the commiſſioners, or the major part of them, and then in his, her, or their cuſtody or power, and diſcover ſuch as are in the cuſtody or power of any other perſon or perſons, that any ways relate to or concern his, her, or their eſtate or effects; and all and every ſuch bankrupt or bankrupts, not in priſon or cuſtody, ſhall at all times after ſuch ſurrender, as aforeſaid, be at liberty, and is and are hereby required to attend ſuch aſſignee or aſſignees, upon every reaſonable notice in writing for that purpoſe given by ſuch aſſi-

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gnee or aſſignees unto ſuch bankrupt or bankrupts, or left for him, her, or them, at his, her, or their houſe, or place of abode, in order to aſſiſt, and ſhall aſſiſt ſuch aſſignee or aſſignees, in making out the accompts of the ſaid bankrupt's eſtate and effects.

86. Sect. 5. All and every bankrupt or bankrupts, having ſurrendered as aforeſaid, ſhall, at all ſeaſonable times, before the expiration of the ſaid forty-two days, or ſuch further time as ſhall be allowed to ſuch bankrupts to finiſh his, her, or their examination, be at liberty to inſpect his, her, or their books, papers, and writings, in the preſence of ſuch aſſignee or aſſignees, or ſome perſon to be appointed by ſuch aſſignee or aſſignees for that purpoſe, and to take and bring with him, her, or them, for his, her, or their aſſiſtance, ſuch perſons as he, ſhe, or they ſhall think fit, not exceeding two perſons at any one time, and to make out ſuch extracts and copies from thence, as he, ſhe, or they ſhall think fit, the better to enable him, her, and them, to make a full and true diſcovery and diſcloſure of his, her, or their eſtate and effects; and in order thereto, the ſaid bankrupt or bankrupts ſhall be free from all arreſts, reſtraint or impriſonment of any of his, her, or their creditors in coming to ſurrender, and from the actual ſurrender of ſuch bankrupt to the ſaid commiſſioners, for and during the ſaid forty-two days, or ſuch further time as ſhall be allowed to ſuch bankrupt or bankrupts, for finiſhing his, her, or their examinations as aforeſaid, provided ſuch bankrupt was not in cuſtody at the time of ſuch ſurrender and ſubmiſſion to be examined; and in caſe ſuch bankrupt ſhall be arreſted for debt, or on any eſcape-warrant, coming to ſurrender him or herſelf to the ſaid commiſſioners, or, after his or her ſurrender, ſhall be ſo arreſted within the time before mentioned, that then, on producing ſuch ſummons or notice, under the hands of the ſaid commiſſioners, aſſignee or aſſignees, to the officer who ſhall arreſt him, her, or them, and making it appear to ſuch officer, that

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ſuch notice or ſummons is ſigned by the ſaid commiſſioners, or the major part of them, or ſuch aſſignee or aſſignees, and giving ſuch officer a copy thereof, ſhall be immediately diſcharged: and in caſe any officer ſhall detain ſuch bankrupt or bankrupts (after he, ſhe, or they ſhall have ſhewn ſuch notice or ſummons to him, and made it appear it was ſigned as aforeſaid) in his cuſtody, ſuch officer ſhall forfeit, and pay to ſuch bankrupt, for his own uſe, the ſum of five pounds for every day ſuch officer ſhall detain ſuch bankrupt; to be recovered by action of debt in any of his majeſty's courts of record at *Weſtminſter*, in the name or names of ſuch bankrupt or bankrupts, with full coſts of ſuit.

87. Sect. 6. Provided, that in caſe any bankrupt be in priſon, or in cuſtody, at the time of iſſuing the ſaid commiſſion, as aforeſaid, and is willing to ſurrender and ſubmit to be examined according to the directions of this act, and can be brought before the ſaid commiſſioners and creditors for that purpoſe, the expence thereof ſhall be paid out of the ſaid bankrupt's eſtate and effects: but in caſe ſuch bankrupt is in execution, or cannot be brought before the commiſſioners, that then the acting commiſſioners ſhall from time to time attend the ſaid bankrupt in priſon or cuſtody, and take his or her diſcovery, as in other caſes; and the aſſignees of the ſaid eſtate ſhall have power, and are hereby required to appoint one or more perſons to attend ſuch bankrupt, being in priſon or in cuſtody, as aforeſaid, from time to time, and to procure to him or her, his or her books, papers, and writings, in order to prepare his or her laſt diſcovery and examination, according to the directions before mentioned; a copy whereof the aſſignees of the ſaid eſtate ſhall apply for, and the ſaid bankrupt ſhall deliver to them or their order, ten days at leaſt before ſuch laſt examination.

88. Sect. 7. All and every perſon and perſons ſo become or to become bankrupts, as aforeſaid, who

ſhall, within the time limited by this act, ſurrender him, her, or themſelves, to the acting commiſſioners named and authorized in or by any commiſſion of bankrupt awarded or to be awarded againſt him, her, or them, and in all things conform, as in and by this act is directed, ſhall be allowed the ſum of five pounds *per centum* out of the neat produce of all the eſtate that ſhall be recovered in, and received; which ſhall be paid unto him, her, or them, by the aſſignee or aſſignees of the ſaid commiſſioners, in caſe the neat produce of the ſaid eſtate, after ſuch allowance made, ſhall be ſufficient to pay the creditors of the ſaid bankrupt, who have proved their debts under the ſaid commiſſion, the ſum of ten ſhillings in the pound, and ſo as the ſaid five pounds *per centum* ſhall not amount in the whole to above the ſum of two hundred pounds: and in caſe the neat produce of the ſaid eſtate ſhall, over and above the allowance hereafter mentioned, be ſufficient to pay the ſaid creditors the ſum of twelve ſhillings and ſixpence in the pound for their reſpective debts, that then all and every perſon or perſons, ſo conforming, ſhall be allowed the ſum of ſeven pounds ten ſhillings *per centum* out of ſuch neat produce, to be paid by the aſſignee or aſſignees, ſo as ſuch ſeven pounds ten ſhillings *p r centum* ſhall not amount in the whole to above the ſum of two hundred and fifty pounds: and in caſe the neat produce of the ſaid eſtate ſhall, over and above the allowance hereafter made, be ſufficient to pay the ſaid creditors the ſum of fifteen ſhillings in the pound for their reſpective debts, that then all and every ſuch perſon and perſons, ſo conforming, ſhall be allowed the ſum of ten pounds *per centum* out of ſuch neat produce, to be paid by the aſſignee or aſſignees, ſo as ſuch ten pounds *per centum* ſhall not amount in the whole to above the ſum of three hundred pounds; and every ſuch bankrupt ſhall be diſcharged from all debts by him, her, or them due or owing at the time that he, ſhe, or they did become bankrupt.

And

And in caſe any ſuch bankrupt ſhall afterwards be arreſted, proſecuted, or impleaded, for any debt due before ſuch time, as he, ſhe, or they became bankrupt, ſuch bankrupt ſhall be diſcharged upon common bail, and ſhall and may plead in general, That the cauſe of ſuch action or ſuit did accrue before ſuch time as he, ſhe, or they became bankrupts, and may give this act and the ſpecial matter in evidence; and the certificate of ſuch bankrupt's conforming, and the allowance thereof according to the directions of this act, ſhall be, and ſhall be allowed to be, ſufficient evidence of the trading, bankruptcy, commiſſion, and other proceedings precedent to the obtaining ſuch certificate, and a verdict ſhall thereupon paſs for the defendant, unleſs the plaintiff in ſuch action can prove the ſaid certificate was obtained unfairly and by fraud, or unleſs the plaintiff in ſuch action can make appear any concealment by ſuch bankrupt to the value of ten pounds; and if a verdict paſs for the defendant, or the plaintiff ſhall become nonſuited, or judgment be given againſt the plaintiff, the defendant ſhall recover his full coſts.

89. Sect. 8. Provided that, if the neat proceed of ſuch bankrupt's eſtate, ſo to be diſcovered, recovered, and received, together with what ſhall be otherwiſe recovered and received, ſhall not amount to ſo much as will pay all and every the creditors of ſuch bankrupt, who ſhall have proved their debts under the ſaid commiſſion, the ſum of ten ſhillings in the pound for their reſpective debts, after all charges firſt had and deducted, that then, and in ſuch caſe, ſuch bankrupt ſhall not be allowed the ſum of five pounds *per centum* out of ſuch eſtate as ſhall be ſo recovered in, but ſhall be allowed and paid, by the aſſignees, ſo much money as the ſaid aſſignees and comiſſioners, authorized as aforeſaid, ſhall think fit to allow to ſuch bankrupt, not exceeding three pounds *per centum*.

90. Sect. 9. Provided that, from and after the 24th day of *June*, 1732, in case any commission of bankruptcy shall issue against any person or persons, who, after the said twenty fourth day of *June*, 1732, shall have been discharged by virtue of this act, or shall have compounded with his, her, or their creditors, or delivered to them his, her, or their estate or effects, and been released by them, or been discharged by any act for the relief of insolvent debtors after the time aforesaid, that then, and in either of those cases, the body and bodies only of such person and persons, conforming as aforesaid, shall be free from arrest and imprisonment by vi tue of this act; but the future estate and effects of every such person and persons shall remain liable to his, her, or their creditors, as before the making of this act (the tools of trade, the necessary houshold goods and furniture, and necessary wearing apparel of such bankrupt, and his wife and children, only excepted) unless the estate of such person or persons, against whom such commission shall be awarded, shall produce clear, after all charges, sufficient to pay every creditor under the said commission, fifteen shillings in the pound for their respective debts.

91. Sect. 10. Provided that no discovery upon oath, or solemn affirmation, to be made by any bankrupt or bankrupts, of his, her, or their estate and effects, pursuant to this act, shall entitle such bankrupt or bankrupts to the benefits allowed by this act, unless the commissioners authorized by such commission, or the major part of them, shall, in writing under their hands and seals, certify to the lord-chancellor, or lord-keeper, or commissioners for the custody of the great seal of *Great Britain*, for the time being, that such bankrupt or bankrupts hath or have made a full discovery of his, her, or their estate and effects, and in all things conformed himself, herself, or themselves according to the directions of this act; and that there doth not appear to them any reason

reaſon to doubt of the truth of ſuch diſcovery, or that the ſame is not a full diſcovery of all ſuch bankrupts eſtates and effects; and unleſs four parts in five in number and value of the creditors of ſuch bankrupt or bankrupts, who ſhall be creditors for not leſs than twenty pounds reſpectively, and who ſhall have duly proved their debts under ſuch commiſſion, or ſome other perſon by them reſpectively duly authorized thereunto, ſhall ſign ſuch certificate, and teſtify their conſent to ſuch allowance and certificate, and to the ſaid bankrupt's diſcharge in purſuance of this act, to be alſo certified by ſuch commiſſioners; but the ſaid commiſſioners ſhall not certify the ſame, till they ſhall have proof by affidavit or affirmation in writing of ſuch creditors or of the perſon by them reſpectively authorized for th t purpoſe, ſigning the ſaid certificate, and of the power and authority by which any perſon ſhall be authorized by any creditor to ſign ſuch certificate for any creditor; which affidavit or affirmation, together with ſuch warrant or authority to ſign, ſhall be laid before the lord-high-chancellor, lord-keeper, or commiſſioners of the great ſeal, with the ſaid certificate, in order for the allowing and confirming the ſame; and unleſs ſuch bankrupt make oath, or, being of the people called Quakers, ſolemnly affirm in writing, that ſuch certificate and conſent of the creditors thereunto were obtained fairly and without fraud; and unleſs ſuch certificate ſhall, after ſuch oath or affirma ion of the bankrupt, be allowed and confirmed by the lord-chancellor, lord-keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain*, for the time being, or by ſuch two of the juſtices of the courts of King's Bench, Common Pleas, or barons of the court of Exchequer at *Weſtminſter*, to whom the conſideration of ſuch certificate ſhall be referred by the lord-chancellor, lord-keeper, or commiſſioners of the great ſeal for the time being; and any of the creditors of ſuch bankrupt are to be allowed to be heard, if they ſhall think fit, before the re-

ſpective perſons aforeſaid, againſt the making ſuch certificate, and againſt the confirmation thereof; nor ſhall any commiſſioner ſign ſuch certificate till after four parts in five in number and value of the ſaid creditors ſhall have ſigned the ſame, as aforeſaid.

92. Sect. 11. Every bond, bill, note, contract, agreement, or other ſecurity whatſoever, to be made or given by any bankrupt, or by any other perſon, unto, or to the uſe of, or in truſt for any creditor or creditors, or for the ſecurity of the payment of any debt or ſum of money due from ſuch bankrupt at the time of his becoming bankrupt, or any part thereof, between the time of his becoming bankrupt, and ſuch bankrupt's diſcharge, as a conſideration, or to the intent to perſuade him, or them, to conſent to or ſign any ſuch allowance or certificate, ſhall be wholly void, and of no effect; and the monies thereby ſecured, or agreed to be paid, ſhall not be recovered or recoverable; and the party ſued on ſuch bond, bill, note, contract, or agreement, ſhall and may plead the general iſſue, and give this act, and the ſpecial matter in evidence.

93. Sect. 12. Provided that nothing in this act ſhall be conſtrued to extend or give or grant any privilege, benefit, or advantage to any bankrupt whatſoever, againſt whom a commiſſion of bankrupt, under the great-ſeal of *Great-Britain*, ſince the ſaid fourteenth day of *May*, 1729, had iſſued, or hereafter ſhall iſſue, who hath or ſhall, for or upon marriage of any of his or her children, have given, advanced, or paid above the value of one hundred pounds, unleſs he or ſhe ſhall prove, or by his or her books fairly kept, or otherwiſe, upon his or her oath, or, being of the people called Quakers, upon ſolemn affirmation, before the major part of the commiſſioners in ſuch commiſſion named and authorized, that he or ſhe had at the time thereof, over and above the value ſo given, advanced or paid, remaining in goods, wares, debts, ready money, or other

other eſtate, real or perſonal, ſufficient to pay and ſatisfy unto each and every perſon, to whom he or ſhe was any wiſe indebted, their full and entire debts; or who hath or ſhall have loſt in any one day the ſum or value of five pounds, or in the whole the ſum or value of five hundred pounds, within the ſpace of twelve months next preceding his, her, or their becoming bankrupt, in playing at or with cards, dice, tables, tennis, bowls, billiards, ſhovel-board, or in or by cock-fighting, horſe races, dog matches, or foot races, or other paſtimes, game or games whatſoever, or in or by bearing a ſhare or part in the ſtakes, wagers, or adventures, or in or by betting on the ſides or hands of ſuch as do or ſhall play, act, ride, or run, as aforeſaid, or that within one year before he or ſhe became bankrupt, ſhall have loſt the ſum of one hundred pounds, by one or more contracts for the purchaſe, ſale, refuſal, or delivery of any ſtock of any company or corporation whatſoever, or any parts or ſhares of any government or public funds or ſecurities, where every ſuch contract was not to be performed within one week, from the time of the making ſuch contract, or where the ſtock or other thing ſo bought or ſold was not actually transferred or delivered in purſuance of ſuch contract.

94. Sect. 13. If any bankrupt, who ſhall have obtained his or her certificate from the acting commiſſioners, and ſuch certificate ſhall have been allowed and confirmed, as by this act is directed, ſhall be taken in execution, or detained in priſon, on account of any debts due or owing before he or ſhe became bankrupt, by reaſon that judgment was obtained before ſuch certificate was allowed and confirmed, it ſhall and may be lawful for any one or more of the judges of the court wherein judgment has been ſo obtained againſt ſuch bankrupt, on ſuch bankrupt's producing his or her certificate allowed and confirmed, to order any ſheriff or ſheriffs, bai-

liff or officer, goaler, or keeper of any priſon, who hath or ſhall have any ſuch bankrupt in his cuſtody by virtue of any ſuch execution, to diſcharge ſuch bankrupt out of cuſtody on ſuch execution without payment of any fee or reward; and ſuch ſheriff or ſheriffs, bailiff or officer, goaler or keeper, is and are hereby required to diſcharge ſuch bankrupt out of cuſtody accordingly, and is and are hereby indemnified from any action for an eſcape for his or their ſo doing.

95. Sect. 14. Upon certificate made under the hands and ſeals of the commiſſioners, by ſuch commiſſion authorized, or the major part of them, that ſuch commiſſion is iſſued, and ſuch perſon or perſons proved before them to become bankrupt or bankrupts, it ſhall and may be lawful to and for all or any of the juſtices of his majeſty's court of King's Bench, or Common Pleas, or barons of the court of Exchequer, and to and for all and every the juſtices of the peace within that part of the kingdom of *Great-Britain* called *England*, the dominion of *Wales*, and town of *Berwick* upon *Tweed*, and they are hereby impowered and required, upon application to them for that purpoſe made, to grant his or their warrant or warrants under his or their hands and ſeals, for the taking and apprehending ſuch perſon or perſons, and him, her, or them to commit to the common goal of the county, where he, ſhe, or they ſhall be ſo apprehended and taken, there to remain, until he, ſhe, or they be removed by order of the ſaid commiſſioners, or the major part of them, by warrant under their hands and ſeals; and the goaler or keeper, to whoſe cuſtody ſuch perſon or perſons ſhall be committed, is hereby required to take and receive ſuch perſon or perſons into his cuſtody, and forthwith to give notice to one or more of the ſaid commiſſioners in the ſaid commiſſion named, of ſuch perſon or perſons being in his or their cuſtody; to the intent the ſaid commiſſioners may ſend their warrant

rant to ſuch goaler or keeper (which they are hereby impowered and required forthwith to ſend) for the delivering ſuch bankrupt or bankrupts to the perſon or perſons named in ſuch warrant, who ſhall be therein authorized to convey and bring ſuch perſon or perſons to the ſaid commiſſioners, in order to ſuch examination and diſcovery, as aforeſaid; and the ſaid commiſſioners are hereby likewiſe authorized and impowered, by ſuch their warrant, or any other warrant, to take and ſeize any the goods, wares, merchandizes, and effects of ſuch bankrupt or bankrupts (the neceſſary wearing apparel of ſuch bankrupt, or of his wife, or children, only excepted) and any of his, her, or their books, papers, or writings, which ſhall be then in the cuſtody or poſſeſſion of ſuch bankrupt or bankrupts, or of any other perſon or perſons, in any priſon or priſons whatſoever.

96. Sect. 15. Provided always, and be it enacted by the authority aforeſaid, That if any ſuch perſon or perſons, ſo apprehended and taken, ſhall, within the time or times allowed by this act for that purpoſe, ſubmit to be examined, and in all things conform, as if he, ſhe, or they had ſurrendered, as by this act ſuch bankrupt or bankrupts is or are required, that then ſuch perſon, ſo ſubmitting and conforming, ſhall have and receive the benefit of this act to all intents and purpoſes, as if he, ſhe, or they had voluntarily come in and ſurrendered himſelf, herſelf, or themſelves.

97. Sect. 16. It ſhall and may be lawful to and for the ſaid commiſſioners, or the major part of them, to examine, as well by word of mouth as on interrogatories in writing, all and every perſon and perſons againſt whom any commiſſion of bankrupt is or ſhall be awarded, touching all matters relating to the trade, dealings, eſtate and effects of all and every ſuch bankrupt and bankrupts, and alſo to examine, in the manner aforeſaid, all

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and every other perſon duly ſummoned before, or preſent at, and meeting of the ſaid commiſſioners, or the major part of them, touching all matters relating to the perſon, trade, dealings, eſtate, and effects of all and every ſuch bankrupt and bankrupts, and any act or acts of bankruptcy committd by him, her, or them, and alſo to take down or reduce into writing the anſwers or verbal examinations of every ſuch bankrupt, or other perſon, had or taken before them as aforeſaid; which examination, ſo taken down or reduced into writing, the party examined ſhall and is hereby required to ſign and ſubſcribe; and in caſe any ſuch bankrupt or bankrupts, or other perſon or perſons, ſhall refuſe to anſwer, or ſhall not fully anſwer, to the ſatisfaction of the commiſſioners, or the major part of them, all lawful queſtions put to him, her, or them, by the ſaid commiſſioners, or the mojor part of them, as well by word of mouth as by interrogatories in writing, or ſhall refuſe to ſign and ſubſcribe his, her, or their examination ſo taken down or reduced into writing as aforeſaid (not having a reaſonable objection either to the wording thereof, or otherwiſe, to be allowed by the ſaid commiſſioners) it ſhall and may be lawful to and for the ſaid commiſſioners, or the major part of them, by warrant under their hands and ſeals, to commit him, her or them, to ſuch priſon as the commiſſioners, or the major part of them, ſhall think fit, there to remain without bail or mainprize, until ſuch time as ſuch perſon or perſons ſhall ſubmit him, her, or themſelves to the ſaid commiſſioners, and full anſwer make to the ſatisfaction of the ſaid commiſſioners to all ſuch queſtions, as ſhall be put to him, her, or them, as aforeſaid, and ſign and ſubſcribe ſuch examination as aforeſaid, according to the true intent and meaning of this act.

98. Sect. 17. Provided always, that in caſe any perſon or perſons ſhall be committed by the ſaid commiſſioners for refuſing to anſwer, or not fully anſwering

anſwering any queſtion, or queſtions put to him, her, or them, by the ſaid commiſſioners by word of mouth, or on interrogatories, that the ſaid commiſſioners ſhall, in their warrant of commitment, ſpecify ſuch queſtion or queſtions.

99. Sect. 18. Provided alſo, that in caſe any perſon or perſons committed by the commiſſioners warrant, by virtue of this or any other acts now in force concerning bankrupts, ſhall bring any *habeas corpus* in order to be diſcharged from any ſuch commitment, and on the return of any ſuch *habeas corpus*, there ſhall appear any ſuch inſufficiency whatſoever in the form of the warrant, whereby ſuch perſon was committed, by reaſon whereof the party might be diſcharged of ſuch commitment; that then it ſhall and may be lawful for the court or judge, before whom ſuch party ſhall be ſo brought by *habeas corpus*, as aforeſaid, and ſuch court or judge ſhall, and is hereby required, by rule, order, or warrant, to commit ſuch perſon or perſons to the ſame priſon, there to remain as aforeſaid, until he, ſhe, or they ſhall conform as aforeſaid, unleſs it ſhall be made appear to ſuch court or judge by the party committed, that he, ſhe, or they have fully anſwered all lawful queſtions put to him, her, or them by the ſaid commiſſioners; or in caſe ſuch perſon was committed for not ſigning his, her, or their examination, unleſs it ſhall appear to ſuch court or judge, that the party ſo committed had a good and ſufficient reaſon for refuſing to ſign the ſame. And in caſe any gaoler or keeper of any priſon, to whom any ſuch bankrupt or bankrupts, perſon or perſons, ſhall be ſo committed, as aforeſaid, ſhall wilfully ſuffer any ſuch bankrupt or bankrupts, perſon or perſons, to eſcape from ſuch priſon, or to go without the walls or doors of the ſaid priſon, until he, ſhe, or they ſhall be duly diſcharged, as aforeſaid, ſuch goaler or keeper ſhall, for ſuch his offence, being duly convicted by indictment or information, forfeit

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five hundred pounds, of lawful money of *Great-Britain*, for the uſe of the creditors of ſuch bankrupt or bankrupts.

100. Sect. 19. The gaoler or keeper of ſuch priſon, as aforeſaid, ſhall, upon requeſt of any perſon or perſons, being a creditor or creditors of ſuch bankrupt (and having proved his, her, or their debt under the ſaid commiſſion, and producing a certificate thereof, under the hands of the ſaid commiſſioners, or the major part of them, which ſuch commiſſioners are hereby required to give *gratis*; forthwith produce and ſhew ſuch perſon or perſons ſo committed, as aforeſaid, to any ſuch creditor or creditors requeſting the ſame; and in caſe ſuch gaoler or keeper of ſuch priſon ſhall refuſe to ſhew, or ſhall not forthwith produce ſuch perſon or perſons ſo committed, as aforeſaid, and being in his actual cuſtody at the time of ſuch requeſt, to ſuch creditor or creditors of ſuch bankrupt, requeſting to ſee ſuch perſon or perſons, committed as aforeſaid, ſuch gaoler and keeper of ſuch priſon ſhall forfeit, for ſuch his wilful refuſal or neglect, the ſum of one hundred pounds of lawful money of *Great-Britain*, for the uſe of the creditors of ſuch bankrupt or bankrupts, to be recovered by action of debt in any of his majeſty's courts of record at *Weſtminſter*, in the name or names of the creditor or creditors requeſting ſuch ſight of ſuch priſoner.

101. Sect. 20. All and every perſon and perſons, who ſhall, at any time after the time allowed to ſuch bankrupt to ſurrender and conform, as aforeſaid, voluntarily come and make diſcovery of any part of ſuch bankrupt's eſtate not before come to the knowledge of the aſſignees; either to the ſaid aſſignees, or to the ſaid commiſſioners, authorized as aforeſaid, or the major part of them, ſhall be allowed five pounds *per centum*, and ſuch further and other reward as the aſſignees and the major part of the creditors in value preſent at any meeting of the creditors ſhall think

think fit, to be paid out of the neat proceed of ſuch bankrupt's eſtate, which ſhall be recovered on ſuch diſcovery; which ſhall be paid to the perſon or perſons ſo diſcovering the ſame by the aſſignee or aſſignees of ſuch bankrupt's eſtate; and the aſſignee or aſſignees ſhall be allowed the ſame in their accompts.

102. Sect. 21. All and every perſon and perſons, who ſhall have accepted of any truſt or truſts, and ſhall wilfully conceal or protect any eſtate, real or perſonal, of any perſon or perſons becoming bankrupt, as aforeſaid, from his, her, or their creditors, and ſhall not, within forty-two days next after ſuch commiſſion ſhall iſſue forth, and notice thereof be given in the *London Gazette*, diſcover and diſcloſe ſuch truſt and eſtate in writing, to one or more of the commiſſioners or aſſignees of ſuch bankrupt or bankrupt's eſtate, and likewiſe ſubmit him or herſelf to be examined by the commiſſioners, in and by the ſaid commiſſion authorized, or the major part of them, if thereunto required, and truly diſcover the ſame, ſhall forfeit the ſum of one hundred pounds, of lawful money of *Great-Britain*, and double the value of the eſtate, either real or perſonal, ſo concealed, to and for the uſe and benefit of the ſaid creditors, to be recovered by action of debt in any of his majeſty's courts of record at *Weſtminſter*, in the name of the aſſignee or aſſignees of the ſaid commiſſioners; in which caſe full coſts ſhall be allowed to either party.

103. Sect. 22. And whereas by an act made in the ſeventh year of his late majeſty's reign, intituled, *An act for the explaining and making more effectual the ſeveral acts concerning bankrupts*, perſons taking bills, bonds, promiſſory notes, or other perſonal ſecurity for their money payable at a future day, are enabled to prove their debts under a commiſſion of bankruptcy, but not to petition for or join in petitioning for any new commiſſion, which having been found to be inconvenient: now it is hereby enacted by the authority

thority aforeſaid, that ſo much of the ſaid act, as diſables any ſuch perſon from petitioning for, or joining in any petition for a commiſſion againſt any perſon or perſons, who have before committed any act of bankruptcy, is hereby repealed: and it ſhall and may be lawful hereafter for ſuch perſon to petition for, or join in petitioning for any ſuch commiſſion of bankruptcy.

103. Sect. 23. And for preventing the taking out commiſſions of bankrupts maliciouſly, be it enacted by the authority aforeſaid, that no commiſſions of bankrupt under the great ſeal of *Great Britain*, ſhall, after the 24th day of *June*, 1732, be awarded and iſſued out againſt any perſon whatſoever, upon the petition of one or more creditors, unleſs the ſingle debt of the creditor, or of two or more perſons being partners petitioning for the ſame, do amount to the ſum of one hundred pounds, or upwards, or unleſs the debt of two creditors, ſo petitioning as aforeſaid, ſhall amount to one hundred and fifty pounds, or upwards, or unleſs the debt of three or more creditors, ſo petitioning as aforeſaid, ſhall amount to two hundred pounds, or upwards: and the creditor or creditors, petitioning for ſuch commiſſion, ſhall, before the ſame ſhall be granted, make an affidavit, or (being one of the people called *Quakers*,) make a ſolemn affirmation in writing before one of the maſters of the high court of chancery (which oath or affimation they are hereby impowered to adminiſter, and which ſhall be filed with the proper officer) of the truth and reality of ſuch his, her, and their reſpective debt and debts, likewiſe give bond to the lord chancellor, lord keeper, or commiſſioners of the great ſeal for the time being, in the penalty of two hundred pounds, to be conditioned for proving his, her, or their debts, as well before the commiſſioners named in ſuch commiſſion, as upon a trial at law, in caſe the due iſſuing forth of the ſame ſhall be conteſted and tried, and alſo for proving the party a bankrupt at the time of taking out ſuch commiſſion, and further to proceed on

ſuch

ſuch commiſſion as herein after is mentioned: and if ſuch debt or debts ſhall not be really due or owing, or if after ſuch commiſſion taken out, it cannot be proved that the party was a bankrupt at the time of the iſſuing of the ſaid commiſſion, but on the contrary it ſhall appear, that ſuch commiſſion was taken out fraudulently or maliciouſly, that then the lord chancellor, lord keeper, or commiſſioners of the great ſeal, for the time being, ſhall and may, upon petition of the party or parties grieved, examine into the ſame, and order ſatisfaction to be made to him, her, or them, for the damages by him, her, or them, ſuſtained; and for the better recovery thereof, may, in caſe there be occaſion, aſſign ſuch bond or bonds to the party or parties ſo petitioning, who may ſue for the ſame in his, her, and their name and names.

104. Sect. 24. And whereas commiſſions of bankrupts are frequently taken out by perſons, who, by means of ſuch commiſſions (on a compoſition propoſed by the bankrupts) and on promiſe not to execute the ſame, prevail with, and extort from the bankrupts their whole debts, or much greater part thereof than ſuch bankrupts pay to their creditors, or otherwiſe get from ſuch bankrupts goods or other real or perſonal ſecurity, which is contrary to the true intent and meaning of the ſeveral ſtatutes made concerning bankrupts, which ſaid ſtatutes intend that all ſuch bankrupts creditors ſhall be on an equal foot, and not one preferred before, or paid more than another, in reſpect of his or her debt; be it therefore enacted by the authority aforeſaid, that if any bankrupt or bankrupts ſhall, after iſſuing of any commiſſion againſt him, her, or them, pay to the perſon or perſons who ſued out the ſame, or otherwiſe give or deliver to ſuch perſon or perſons goods, or any other ſatisfaction or ſecurity for his, her, or their debt, whereby ſuch perſon or perſons, ſueing out ſuch commiſſion, ſhall privately have and receive more in the pound, in reſpect of his, her, or their debt, than the other creditors, ſuch payment of money, delivery of

goods,

goods, or giving greater or other ſecurity or ſatisfaction, ſhall be deemed and taken to be ſuch an act of bankruptcy, whereby, on good proof thereof, ſuch commiſſion ſhall and may be ſuperſeded; and it ſhall be lawful for the lord chancellor, lord keeper, or commiſſioners, for the cuſtody of the great ſeal of *Great Britain*, for the time being, to award to any creditor or creditors petitioning another commiſſion; and ſuch perſon or perſons ſo taking or receiving ſuch goods, or other ſatisfation, as aforeſaid, ſhall forfeit and loſe as well his, her, or their whole debt, as the whole he, ſhe, or they ſhall have taken or received, and ſhall pay back and deliver up the ſame, or the full value thereof, to ſuch perſon or perſons as the ſaid commiſſioners, acting under ſuch new commiſſion, ſhall appoint, in truſt for, and to be divided amongſt the other of the bankrupt's creditors, in proportion to their reſpective debts.

105. Sect. 25. The creditor or creditors, who ſhall petition for, and obtain any commiſſion of bankrupt, ſhall be and is and are hereby obliged, at his, her, or their own coſts and expences, to ſue forth and proſecute the ſame, until an aſſignee or aſſignees ſhall be choſen of ſuch bankrupt's eſtate and effects; and the commiſſioners to be named in any ſuch commiſſion ſhall, at the ſame meeting which ſhall be appointed for the choice of the aſſignees, aſcertain ſuch coſts, and by writing under their hands ſhall direct and order the aſſignee or aſſignees of ſuch bankrupt's eſtate, who is and are hereby required to pay and reimburſe ſuch petitioning creditor or creditors ſuch his, her, or their coſts and charges as aforeſaid, out of the firſt monies or effects of the ſaid bankrupt, that ſhall be got in and received under the ſaid commiſſion; and every creditor of the ſaid bankrupt ſhall be at liberty to prove his, her, or their debt or debts under the ſaid commiſſion, without paying any contribution or ſum of money whatſoever for or on account of ſuch debt or debts.

106.

106. Sect. 26. Where any commiſſion of bankrupt ſhall iſſue out from and after the twenty-fourth day of *June*, 1732, the commiſſioners therein named, or the major part of them thereby authorized, ſhall forthwith, after they have declared the perſon or perſons, againſt whom ſuch commiſſion ſhall iſſue, a bankrupt or bankrupts, cauſe notice thereof to be given in the *London Gazette*, and ſhall appoint a time and place for the creditors to meet; which meeting for the city of *London*, and all places within the Bills of mortality, ſhall be at the Guildhall of the ſaid city, in order to chooſe an aſſignee or aſſignees of the ſaid bankrupt's eſtate and effects: at which meeting the ſaid commiſſioners ſhall admit the proof of any creditor's debt (that ſhall live remote from the place of ſuch meeting of the commiſſioners) by affidavit, or, being of the people called Quakers, by ſolemn affirmation, and alſo permit any perſon, duly authorized by letter of attorney from ſuch creditors, oath or affirmation being made of the due execution thereof, either by an affidavit ſworn, or affirmation made before a maſter in chancery, ordinary or extraordinary, or before the commiſſioners, *viva voce* (which oath or affirmation they are hereby reſpectively authorized to adminiſter) and in caſe of creditors reſiding in foreign parts, ſuch affidavits or ſolemn affirmations to be made before a magiſtrate, where the party ſhall be reſiding, and ſhall, together with ſuch creditors letters of attorney, be atteſted by a notary public, to vote in the choice of an aſſignee or aſſignees of ſuch bankrupt's eſtate and effects, in the place and ſtead of ſuch creditors; and the commiſſioners, or the major part of them authorized, ſhall aſſign every ſuch bankrupt's eſtate and effects unto ſuch perſon or perſons, as the major part in value of ſuch creditors, according to the ſeveral debts then proved, ſhall chooſe, as aforeſaid; and the aſſignee or aſſignees, ſo choſen, ſhall be obliged to keep one or more diſtinct book or books of accompt, wherein he or they ſhall duly enter all ſum and ſums of mo-

ney, or other effects, which he or they ſhall have got in, or received out of the ſaid bankrupt's eſtate; to which book or books of accompt every creditor, who ſhall have proved his or her debt, ſhall, at all ſeaſonable times, have free reſort, and inſpect the ſame, as often as he or ſhe ſhall think fit.

107. Sect. 27. provided that no creditor, or any other perſon for and on the behalf of any creditor, ſhall be permitted to vote in ſuch choice of aſſignee or aſſignees, whoſe debt, or the debt of the perſon or perſons ſo authorizing him to vote, ſhall not amount to the ſum of ten pounds, or upwards.

108. Sect. 28. Where it ſhall appear to the ſaid commiſſioners, or the major part of them, that there hath been mutual credit given by the bankrupt, and any other perſon, or mutual debts between the bankrupt and any other perſon, at any time before ſuch perſon became bankrupt, the ſaid commiſſioners, or the major part of them, or the aſſignees of ſuch bankrupt's eſtate; ſhall ſtate the account between them, and one debt may be ſet againſt another; and what ſhall appear to be due on either ſide, on the balance of ſuch account, and on ſetting ſuch debts againſt one another, and no more, ſhall be claimed or paid on either ſide reſpectively.

109. Sect. 29. And whereas many abuſes have been committed by pretended creditors of bankrupts; be it enacted by the authority aforeſaid, that if any perſon at any time hereafter ſhall, before the acting commiſſioners in any commiſſion of bankrupt, or by affidavit or affirmation exhibited to them, ſwear or, depoſe, or, being of the people called Quakers, affirm, that any ſum of money is due to him or her from any bankrupt or bankrupts, which ſum of money is not really due or owing, or ſhall ſwear or affirm that more is due, than is really due or owing, knowing the ſame to be not due or owing, and that ſuch oath or affirmation is falſe and untrue, and being thereof convicted by indictment or information, ſuch perſon ſhall ſuffer the pains and penalties inflicted by the ſeveral

veral ſtatutes made and now in force againſt wilful perjury, and ſhall moreover be liable to pay double the ſum ſo ſworn or affirmed to be due or owing, as aforeſaid, to be recovered and levied as other penalties and forfeitures are upon penal ſtatutes after conviction to be levied and recovered; and ſuch double ſum ſhall be equally divided among all the creditors ſeeking relief under the ſaid commiſſion.

110. Sect. 30. Provided, that it ſhall and may be lawful for the ſaid commiſſioners, authorized as aforeſaid, or the major part of them, as often as they ſhall ſee cauſe, for the better preſerving and ſecuring the bankrupt's eſtate, immediately to appoint one or more aſſignee or aſſignees of the eſtate and effects, or any part thereof; which aſſignee or aſſignees, or any of them, ſhall or may be removed, or diſplaced at the meeting of the creditors, ſo to be appointed, as aforeſaid, for choice of aſſignees, if they or the major part in value of them (whoſe debts reſpectively amount to ten pounds or upwards, as aforeſaid) then preſent, and of ſuch perſons duly authorized, as aforeſaid, ſhall think fit; and ſuch aſſignee or aſſignees, as ſhall be ſo removed and diſplaced, ſhall deliver up and aſſign all the eſtate and effects of ſuch bankrupt, which ſhall have come to his or their hands or poſſeſſion, or which ſhall have been aſſigned by the ſaid commiſſioners, as aforeſaid, unto ſuch other aſſignee or aſſignees, who ſhall be ſo choſen by the creditors, as aforeſaid; and all the eſtate and effects of the bankrupt, which ſhall be delivered up or aſſigned, ſhall be to all intents and purpoſes as effectually and legally veſted in ſuch new aſſignee or aſſignees, as if the firſt aſſignment had been made to him or them by the ſaid commiſſioners; and if ſuch firſt aſſignee or aſſignees ſhall refuſe or neglect, by the ſpace of ten days next after notice given of the ſaid choice of ſuch new aſſignee or aſſignees, and of his and their conſent to accept ſuch aſſignment, ſignified to the firſt aſſignee or aſſignees, by writing under his or their hand or hands to make ſuch aſſignment and delivery, as aforeſaid,

every ſuch firſt aſſignee or aſſignees ſhall reſpectively forfeit the ſum of two hundred pounds, to be divided and diſtributed amongſt the creditors, towards ſatisfaction of their debts, in ſuch manner as the eſtate of the bankrupt is or ought to be divided and diſtributed, and to be recovered by action of debt, bill, plaint, or information, in any of his majeſty's courts of record at *Weſtminſter*, by ſuch perſon or perſons, as ſuch major part of the commiſſioners, authorized, as aforeſaid, ſhall appoint to ſue for the ſame, with full coſts of ſuit, wherein no privilege, protection, or wager in law, or more than one imparlance ſhall be allowed.

111. Sect. 31. And whereas it may be found neceſſary, that as well aſſignments of bankrupts eſtates already made by commiſſioners, as aſſignments hereafter to be made purſuant to the choice of creditors, ſhould be vacated, and a new aſſignment or aſſignments be made of the debts and effects unreceived and not diſpoſed by the then aſſignees to other perſons to be choſen by the creditors, as aforeſaid; be it therefore enacted and declared by the authority aforeſaid, that it ſhall and may be lawful to and for the lord chancellor, lord keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain*, for the time being, upon petition of any creditors, to make ſuch order therein as he or they ſhall think juſt and reaſonable: and in caſe a new aſſignment ſhall be ordered to be made, as aforeſaid, that then ſuch debts, effects, and eſtate of ſuch bankrupts ſhall be thereby effectually and legally veſted in ſuch new aſſignee or aſſignees; and it ſhall and may be lawful for him and them to ſue for the ſame in his or their name or names and to diſcharge any action or ſuit, or to give any acquittance for ſuch debts, as effectually to all intents and purpoſes, as the aſſignee or aſſignees in the former aſſignment might have done, in caſe no new aſſignment had been made; and that the ſaid commiſſioners ſhall cauſe public notice to be given in the two *London Gazetties*, that ſhall immediately follow the removal

removal of ſuch aſſignee or aſſignees, and the appointment of ſuch other aſſignee or aſſignees, as aforeſaid, that ſuch aſſignee or aſſignees is, or are removed, and ſuch other aſſignee or aſſignees appointed in his or their ſtead, and that ſuch perſons as are indebted to the ſaid bankrupt's eſtate do not pay ſuch debt or debts to ſuch aſſignee or aſſignees as ſhall be removed as aforeſaid.

112. Sect. 32. And whereas by reaſon of the monies which are lodged in the hands of aſſignees until a dividend is made, aſſignees do oftentimes delay the dividing thereof, to the very great prejudice of the bankrupt's creditors: for preventing whereof, and to the end aſſignees may make ſpeedy dividends of the eſtate and effects of ſuch bankrupts, be it enacted by the authority aforeſaid, that before the creditors ſhall proceed to the choice of an aſſignee or aſſignees of any *bankrupt's* eſtate, the major part in value of the ſaid bankrupt's creditors then preſent ſhall, if they think fit, direct in what manner, how, and with whom, and where, the monies ariſing by, and to be received from time to time out of the bankrupt's eſtate, ſhall be paid in and remain, until the ſame ſhall be divided amongſt all the creditors, as by this act is directed; to which rule and direction every ſuch aſſignee and aſſignees, afterwards to be choſen, ſhall conform as often as 100*l.* ſhall be got in and received from ſuch bankrupt's eſtate, and ſhall be and are hereby indemnified for what they ſhall do in purſuance of ſuch direction of the ſaid creditors as aforeſaid.

113. Sect. 33. Every perſon or perſons choſen or who ſhall be choſen aſſignee or aſſignees of the eſtate and effects of ſuch bankrupt, ſhall, at ſome time after the expiration of four months, and within twelve months from the time of iſſuing of ſuch commiſſion, cauſe at leaſt twenty one days public notice to be given in the *London Gazette*, of the time and place the commiſſioners and aſſignees intend to meet, to make a dividend or diſtribution of ſuch bankrupt's

eſtate and effects; at which time the creditors, who have not before proved their debts, ſhall then be at liberty to prove the ſame; which meeting for the city of *London*, and all places within the bills of mortality, ſhall be at the *Guild Hall* of the ſaid city; and upon every ſuch meeting the aſſignee or aſſignees ſhall produce, to the ſaid commiſſioners and creditors then preſent, fair and juſt accounts of all his and their receipts and payments touching the ſaid bankrupt's eſtate and effects, and of what ſhall remain out-ſtanding, and the particulars thereof; and ſhall, if the creditors then preſent, or the major part of them, require the ſame, be examined upon oath, or being of the people called *Quakers*, upon ſolemn affirmation, before the ſaid commiſſioners, or the major part of them, touching the truth of ſuch accounts; and in ſuch accounts the ſaid aſſignee or aſſignees ſhall be allowed and retain all ſuch ſum and ſums of money, as they ſhall have paid and expended in ſuing out and proſecuting of ſuch commiſſion, and all other juſt allowances, on account of and by reaſon or means of their being aſſignee or aſſignees; and the ſaid commiſſioners, or the major part of them ſhall order ſuch part of the neat produce of the ſaid bankrupt's eſtate, as by ſuch accounts or otherwiſe ſhall appear to be in the hands of the ſaid aſſignees, as they or the major part of them ſhall think fit, to be forthwith divided amongſt ſuch of the bankrupt's creditors, who have duly proved their debts under ſuch commiſſion, in proportion to their ſeveral and reſpective debts; and the commiſſioners, or the major part of them, ſhall make ſuch their order for a dividend in writing under their hands, and ſhall cauſe one part of ſuch order to be filed amongſt the proceedings under the ſaid commiſſion, and ſhall deliver unto each of the aſſignee or aſſignees, under ſuch commiſſion, a duplicate of ſuch their order likewiſe, under the hands of the ſaid commiſſioners; which order of diſtribution ſhall contain an account of the time and place of making ſuch order, and the ſum

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total or *quantum* of all the debts proved under the ſaid commiſſion, and the ſum total of the money remaining in the hands of the aſſignee or aſſignees to be divided, and how much in particular in the pound is then ordered to be paid to every creditor under the ſaid commiſſion; and the ſaid aſſignee or aſſignees in purſuance of ſuch order, and without any deed or deeds of diſtribution to be made for that purpoſe, ſhall forthwith make ſuch dividend and diſtribution accordingly, and ſhall take receipts, in a book to be kept for that purpoſe, from each creditor, for the part or ſhare of ſuch dividend or diſtribution, which he or they ſhall make and pay to each creditor reſpectively; and ſuch order and receipt ſhall be a full and effectual diſcharge to ſuch aſſignee, for ſo much as he ſhall fairly pay, purſuant to ſuch order as aforeſaid.

114. Sect. 34. And whereas aſſignees are and may ſometimes be prevented from making ſuch ſpeedy dividends of the eſtate and effects of bankrupts, as by this act is intended, by reaſon of debts due, or pretended and claimed to be due from ſuch bankrupts, upon long and intricate accounts or demands which are diſputed, or not admitted by the commiſſioners and creditors to be juſt and fair debts, and ſuch claimants are thereby obliged to aſcertain ſuch their demands by actions or ſuits in law or equity, which are oftentimes many years depending, and many other differences and difficulties do ariſe under commiſſions of bankrupts, which might be determined by arbitration, if aſſignees had power to ſubmit the ſame; be it therefore enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the aſſignee or aſſignees of any bankrupt's eſtate and effects, by and with the conſent of the major part in value of the bankrupt's creditors, who ſhall have duly proved their debts under ſuch commiſſion, and who ſhall be preſent at any meeting of the ſaid creditors, purſuant to notice to be for that purpoſe given in the

London Gazette, to ſubmit any difference or diſpute between ſuch aſſignee or aſſignees, and any perſon or perſons whatſoever, for or on account, or by reaſon or means of any matter, cauſe, or thing whatſoever relating to ſuch bankrupt or bankrupts, his, her, or their eſtate or effects, to the final end and determination of arbitrators to be choſen by the ſaid aſſignee or aſſignees, and the major part in value of ſuch creditors, and the party or parties with whom they ſhall have ſuch difference, and to perform the award of ſuch arbitrators, or otherwiſe to compound and agree the matters in difference and diſpute between them, in ſuch manner as the ſaid aſſignee or aſſignees with ſuch conſent as aforeſaid, ſhall think fit, and can agree and the ſame ſhall be binding to all the creditors of the ſaid bankrupt or bankrupts; and the aſſignees are hereby indemnified for what they ſhall fairly do according to the direction aforeſaid.

115. Sect. 35. Any aſſignee or aſſignees made or choſen as aforeſaid, ſhall be, and is, and are hereby impowered by and with the conſent of the major part of ſuch bankrupt's creditors in value, who ſhall be preſent at a meeting to be had for that purpoſe, of which public notice ſhall be given in the *London Gazette*, to make compoſition with any perſon or perſons, debtors or accomptants to ſuch bankrupts, where the ſame ſhall appear neceſſary and reaſonable and to take ſuch reaſonable part as can upon ſuch compoſition be gotten in full diſcharge of ſuch debts and accounts.

116. Sect. 36. Provided that after ſuch bankrupt or bankrupts ſhall have obtained his, her, or their certificate, and the ſame ſhall be duly confirmed, as herein is mentioned, every ſuch bankrupt or bankrupts ſhall, and is, and are hereby obliged to give his, her, or their attendance upon every reaſonable notice in writing, to be given to him, her, or them, or to be left at his, her, or their uſual place of abode, by the aſſignee or aſſignees, or their order, thereby requiring him, her, or them, to attend the aſſignee or aſſignees,

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of ſuch bankrupt's eſtate, in order to make up, adjuſt, or ſettle any account or accounts between ſuch bankrupt or bankrupts, and any debtor to, or creditor of ſuch bankrupt's eſtate, or to attend any court or courts of record, in order to be examined touching the ſame, or for ſuch other buſineſs which ſuch aſſignee or aſſignees ſhall judge neceſſary for geting in the ſaid bankrupt's eſtate and effects, for the benefit of his, her, or their creditors; for which ſaid attendance the bankrupt ſhall be allowed and paid the ſum of 2 *s.* 6 *d. per diem*, by ſuch aſſignee or aſſignees, out of the bankrupt's eſtate; and in caſe ſuch bankrupt or bankrupts ſhall neglect or refuſe to attend, or on ſuch attendance ſhall refuſe to aſſiſt in ſuch diſcovery (without good and ſufficient cauſe to be ſhewn to the commiſſioners, or the major part of them, for ſuch his, her, or their neglect or refuſal, to be by them allowed as ſufficient) ſuch aſſignee or aſſignees, making due proof thereof upon oath, or, being of the people called *Quakers*, upon ſolemn affirmation, before the ſaid commiſſioners, authorized as aforeſaid, or the major part of them; the ſaid commiſſioners, or the major part of them, are hereby impowered and required to iſſue a warrant or warrants, directed to ſuch perſon or perſons as they ſhall think proper, for apprehending ſuch bankrupt or bankrupts, and him, her, or them, to commit to the county goal, there to remain in cloſe cuſtody without bail or mainprize, until he, ſhe, or they ſhall duly conform to the ſatisfaction of the ſaid commiſſioners, authorized as aforeſaid, and be by the ſaid commiſſioners, or the ſpecial order of the lord chancellor, lord keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain*, for the time being, or otherwiſe, by due courſe of law diſcharged: and ſuch goaler or keeper of ſuch priſon to which ſuch bankrupt or bankrupts ſhall be committed, is hereby required to keep ſuch perſon or perſons in cloſe cuſtody within the walls of the ſaid priſon, until he, ſhe, or they be duly diſcharged, as aforeſaid, under the pains and penalties before mentioned

tioned for ſuch goaler or keeper ſuffering ſuch priſoners, committed purſuant to this act, to eſcape and go at large.

117, Sect. 37. Within eighteen months next after the iſſuing of any ſuch commiſſion as aforeſaid, the aſſignee or aſſignees ſhall make a ſecond dividend of the bankrupts eſtate and effects, in caſe the ſame was not wholly divided upon the firſt dividend, and ſhall cauſe a notice to be inſerted in the *London Gazette*, of the time and place the ſaid commiſſioners intend to meet to make a ſecond dividend and diſtribution of ſuch bankrupt's eſtate or effects, and for the creditors who ſhall not before have proved their debts, to come and prove the ſame; and at ſuch meeting every ſuch aſſignee or aſſignees ſhall produce upon oath or affirmation, as aforeſaid, his, her, or their account or accounts of the bankrupt's eſtate and effects, and what upon the balance thereof ſhall appear to be in his, her, or their hands, ſhall, by the like order of the commiſſioners, or the major part of them, be forthwith divided among ſuch of the bankrupt's creditors, who ſhall have made due proof of their debts, in proportion to their ſeveral and reſpective debts; which ſecond dividend ſhall be final, unleſs any ſuit at law or in equity ſhall be depending, or any part of the eſtate ſtanding out, that cannot have been diſpoſed of, or that the major part of the creditors ſhall not have agreed to be ſold and diſpoſed of in manner aforeſaid, or unleſs ſome other or future eſtate or effects of the ſaid bankrupt ſhall afterwards come to, or veſt in, the ſaid aſſignee or aſſignees in which caſe the ſaid aſſignee or aſſignees ſhall, as ſoon as may be, convert ſuch future or other eſtate and effects into money in manner aforeſaid, and ſhall within two months next after the ſame ſhall be converted into money, as aforeſaid, by the like order of the commiſſioners, or the major part of them, divide the ſame amongſt ſuch bankrupt's creditors who ſhall have made due proof of their debts under ſuch commiſſion.

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118. Sect. 38. Provided that no ſuit in equity ſhall be commenced by any aſſignee or aſſignees, without the conſent of the major part in value of the creditors of ſuch bankrupt, who ſhall be preſent at a meeting of the creditors, purſuant to notice to be given in the *London Gazette* for that purpoſe.

119. Sect. 39. And whereas perſons dealing as bankers, brokers and factors, are frequently entruſted with great ſums of money, and with goods and effects of very great value, belonging to other perſons; it is hereby further enacted, that ſuch bankers, brokers, and factors, ſhall be, and are hereby declared to be, ſubject and liable to this, and other the ſtatutes made concerning bankrupts.

120. Sect. 40. Provided that no farmer, grazier, or drover of cattle, or any perſon or perſons who is or are, or ſhall be receiver-general of the taxes, granted by act of parliament, ſhall be entitled as ſuch to any of the benefits given by this act, or be deemed a bankrupt within the ſame, or within any of the ſtatutes now in force concerning bankrupts.

121. Sect. 41. And whereas commiſſions of bankrupts, and the depoſitions taken before the commiſſioners of bankrupt, and the proceedings upon ſuch commiſſions, are moſt commonly kept by ſuch perſons, as act as clerks or ſecretaries to ſuch commiſſioners, and, by reaſon of the death of ſuch clerks or ſecretaries, are many times loſt or miſlaid, by means whereof ſuch perſons as have or may purchaſe any meſſuages, lands, tenements or hereditaments, under any commiſſion grounded upon the ſtatutes made concerning bankrupts, may be diſabled to make out their right and title to the ſame; and there being no certain place where the creditors of any bankrupt, or any perſon or perſons claiming any eſtate or intereſt in any meſſuages, lands, tenements, or hereditaments, by or under any ſuch commiſſion, as aforeſaid, can have recourſe to ſuch commiſſion,

and

and the proceedings thereupon; and ſuch commiſſions, depoſitions, and proceedings, in caſe they can be produced, are not at preſent of record, nor can be given in evidence, which may be of very ill conſequence to ſuch purchaſers or perſons claiming as aforeſaid; be it therefore further enacted, by the authority aforeſaid, that, upon the petition of any perſon or perſons to the lord chancellor, lord-keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain*, praying, that ſuch commiſſions and the depoſitions taken thereon, or any part of ſuch depoſitions, and ſuch certificates ſo to be allowed and confirmed, as aforeſaid, or any certificates heretofore allowed and confirmed, or any other matters or things relating to the ſaid commiſſions, or the proceedings thereupon, may be entered of record, the lord high chancellor, lord keeper, or commiſſioners of the great ſeal, ſhall and may direct, and order ſuch commiſſions, depoſitions, proceedings, and certificates or other matters or things, to be entered of record; and in caſe of the death of the witneſſes proving ſuch bankruptcy, or in caſe the ſaid commiſſions, depoſitions, proceedings, or other matters or things, ſhall be loſt or miſlaid, a true copy of the record of ſuch commiſſions, depoſitions, and proceedings, or other matters or things, ſigned and atteſted as herein after is mentioned, ſhall and may, upon all occaſions, be given in evidence to prove ſuch commiſſions, and the bankruptcy of ſuch perſon againſt whom ſuch commiſſion hath been or ſhall be awarded, or other matters or things; and all certificates which have been allowed and confirmed, or to be allowed and confirmed, and entered of record, as aforeſaid, or a true copy of every certificate, ſigned and atteſted as herein after is mentioned, ſhall and may be given in evidence in any of his majeſty's courts of record, and be, without any further proof, deemed, adjudged, and taken, to be a full and effectual bar and diſcharge of and againſt any action or ſuit, which ſhall be commenced

menced or brought by any creditor or creditors of ſuch bankrupt, for any debt or demand contracted, due, or demandable before the iſſuing of ſuch commiſſion, unleſs any creditor or creditors of the perſon that hath ſuch certificate, ſhall prove that ſuch certificate was fraudulently obtained; in which caſe coſts ſhall be allowed to either party, as in other common caſes: and, to the end any creditor or other perſon or perſons, may know where to ſearch, and ſee whether ſuch commiſſion hath iſſued, and find what depoſitions have been taken by virtue thereof, and what proceedings have been thereupon, and whether the ſaid bankrupt hath made ſuch affidavit or affirmation, as aforeſaid, and whether ſuch certificates are entered of record, as aforeſaid, and all other matters or things which ſhall be entered of record, in purſuance of this act, the lord-high-chancellor, lord-keeper, or commiſſioners for the cuſtody of the great-ſeal, ſhall appoint a certain proper place near the inns of courts, where all and every the matters aforeſaid, ſhall be entered of record, where all perſons ſhall be at liberty to ſearch and ſee if the ſame are duly entered of record; and the lord-chancellor, lord-keeper, or commiſſioners, ſhall, by a writing under his or their hands, appoint a proper perſon, who ſhall, by himſelf, or his ſufficient deputy, to be appointed by the lord high chancellor, lord-keeper, or commiſſioners, by a writing under his or their hands, enter of record ſuch commiſſions, depoſitions, proceedings, and certificates, and other matters and things, and have the cuſtody of the entries thereof; and alſo appoint ſuch fee and reward to be paid to ſuch perſon for his labour and pains therein, as the lord high chancellor, lord-keeper, or commiſſioners ſhall think reaſonable, not exceeding what is uſually paid in the like caſes; and that the perſon ſo to be appointed, and his deputy, ſhall continue to enter of record all and every the matters and things aforeſaid, and to have the cuſtody of the

ſame

ſame, ſo long as he or they ſhall reſpectively behave themſelves well in entring the ſame of record, and keeping ſuch entries, and ſhall not be removed but by order in writing under the hand of the lord high chancellor, lord keeper, or commiſſioners, on a good and ſufficient cauſe therein ſpecified; and in caſe ſuch perſon ſhall die, or be, as aforeſaid, removed, the lord high chancellor, lord keeper, or commiſſioners for the time being, ſhall and may, in writing under his or their hands, appoint another perſon to enter the ſame of record, who ſhall have the cuſtody of the entries thereof, and ſhall have and receive the like fee and reward for his labour and pains therein.

122. Sect. 42. And whereas the ſuing out and proſecuting of commiſſions of bankrupt is at preſent very expenſive, to the great prejudice of the bankrupt and his creditors; be it further enacted by the authority aforeſaid, that there ſhall not be paid or allowed, by the creditors, or out of the eſtate of the bankrupt, any monies whatſoever for expences in eating or drinking of the commiſſioners, or of any other perſons, at the times of the meetings of the ſaid commiſſioners, or any of the creditors: and that no ſchedule ſhall be annexed to any deed of aſſignment of the perſonal eſtate of ſuch bankrupt from the commiſſioners to the aſſignee or aſſignees of the ſaid eſtate; and if any commiſſioner or commiſſioners in any commiſſion, ſhall order any ſuch expence to be made, or eat or drink at any ſuch meeting, at the charge of the creditors, or out of the eſtate of ſuch bankrupt, or receive or take above the ſum of twenty ſhillings each commiſſioner for each reſpective meeting, every ſuch commiſſioner ſo offending, ſhall be diſabled for ever to act as a commiſſioner in ſuch or any other commiſſion founded on this act, or any of the ſtatutes made concerning bankrupts.

123. Sect. 43. Provided that the ſaid commiſſioners, authorized as aforeſaid, and every of them, ſhall

ſhall not be capable of acting as a commiſſioner or commiſſioners in the execution of any of the powers and authorities given and granted by this preſent act, or any other act or acts of parliament now in force concerning bankrupts, after the twenty-fourth day of *June*, 1732, (unleſs it be the power hereby given of adminiſtring oaths to commiſſioners) until ſuch time as he and they reſpectively ſhall have taken an oath to the effect following: that is to ſay;

I A. B. do ſwear, That I will faithfully, impartially, and honeſtly, according to the beſt of my ſkill and knowledge, execute the ſeveral powers and truſts repoſed in me, as a commiſſioner in a commiſſion of bankrupt againſt

and that without favour or affection, prejudice or malice.

So help me God.

124. Sect. 44. Which oath any two or more of the ſaid commiſſioners are hereby impowered and required to adminiſter to each other in the ſame commiſſion named and authorized; and they, the ſaid commiſſioners ſhall and are hereby required to enter and keep a memorial or memorials thereof, ſigned by them reſpectively, among the depoſitions and other proceedings on each reſpective commiſſion that ſhall be iſſued forth by virtue of this act, or any other act or acts of parliament now in force concerning bankrupts.

125. Sect. 45. No commiſſion of bankrupt ſhall abate by reaſon of the death of his preſent majeſty (whom God long preſerve) his heirs or ſucceſſors, but ſuch commiſſions ſhall continue in full force; and, if it ſhall be neceſſary to renew any ſuch commiſſion, by reaſon of the death of the commiſſioners named in ſuch commiſſion, ſo that a ſufficient number of commiſſioners ſhall not be living, who can act therein, or for any other cauſe, in every ſuch caſe ſuch commiſſion ſhall be renewed, and but half of the fees

fees uſually paid upon granting or obtaining of commiſſions of bankrupt ſhall be paid by any ſuch renewed commiſſions.

126. Sect. 46. And to the end that commiſſions of bankrupt may be carried on and proſecuted with as little expence as reaſonably may be, be it enacted by the authority aforeſaid, That all bills of fees or diſburſements claimed or demanded by any ſollicitor, clerk, or attorney employed under any commiſſion of bankrupt, ſhall be ſettled, adjuſted, and certified by one of the maſters of the court of chancery; and ſo much as the maſter ſhall certify to be due to ſuch clerk, ſollicitor, or attorney, and no more, ſhall be paid by the aſſignee under ſuch commiſſion; and the maſter, who ſhall ſettle and adjuſt ſuch bill, ſhall have and receive for his care in ſettling and adjuſting the ſame, as alſo for his certificate thereof, the ſum of twenty ſhillings, and no more.

127. Sect. 47. And whereas ſeveral bankrupts have, either through inadvertency, or the intricacy and multiplicity of their affairs, failed to obtain, within the time limited, certificates allowed as directed by a clauſe in an act paſſed in the third year of the reign of his preſent majeſty (amongſt other things) for relief of bankrupts whoſe certificates were not allowed before the expiration of a late act for the better preventing frauds committed by bankrupts, now expired, notwithſtanding they have diſcovered all their eſtate and effects, and delivered the ſame up for the benefit of their creditors, and been conformable unto the ſaid act in other particulars; be it therefore further enacted, by the authority aforeſaid, that all and every bankrupt and bankrupts who was or were declared a bankrupt or bankrupts, on or before the fourteenth day of *May*, 1729, and have diſcovered all their eſtate and effects, and have delivered up the ſame for the benefit of their creditors, ſhall be entitled to all and ſingular the relief, benefit, and advantages, and be ſubject

and

and liable to all the penalties mentioned or contained in the act of parliament paſſed in the fifth year of his late majeſty king *George* the firſt, intituled, An act for the better preventing frauds committed by bankrupts, if they already have obtained, or ſhall hereafter at any time before the twenty-fifth day of *March*, 1733, obtain certificates of their conformity purſuant to the ſaid act, and ſuch certificates ſhall be allowed and confirmed as the act directs.

128. Sect. 48. And whereas actions may have been brought againſt ſuch bankrupts, and other proceedings had thereon, for cauſes and matters ariſing and growing due before the time of the bankruptcy of ſuch bankrupts, be it further enacted, by the authority aforeſaid, That all ſuch actions and all proceedings thereon for any ſuch cauſes or matters ſhall be and are hereby diſcharged againſt ſuch bankrupts and their bail, ſo obtaining ſuch certificates allowed as aforeſaid.

129. Sect. 49. This act ſhall continue and be in force for the ſpace of three years, from the twenty-fourth day of *June*, 1732, and from thence to the end of the then next ſeſſion of parliament, and no longer.

Continued by 9 Geo. II. cap. 18, *until the 29th of* September, 1743.

Continued by 16 Geo. II. cap. 27, *until the* 29th *of* September, 1750.

Continued by 24 Geo. II. cap. 57., *ſect.* 8, *until the 1ſt of* September, 1757.

Continued by 31 Geo. II, cap. 35, *until the 29th of* September, 1764. *and from thence to the end of the then next ſeſſion of parliament.*

130. Sect. 1. Stat. 19 *Geo.* II. *c.* 32. From and after 29 *October*, 1746, no perſon who is and ſhall be really and *bona fide* a creditor of any bankrupt for and in reſpect of goods really and *bona fide* ſold to ſuch bankrupt, or for or in reſpect of any bill or bills of exchange really and *bona fide* drawn, negotiated, or accepted by ſuch bankrupt in the uſual and ordinary courſe of

trade and dealing, ſhall be liable to refund or repay to the aſſignee or aſſignees of ſuch bankrupt's eſtate, any money which before the ſuing forth ſuch commiſſion was really and *bona fide*, and in the uſual and ordinary courſe of trade and dealing received by ſuch perſon of any ſuch bankrupt before ſuch time as the perſon receiving the ſame ſhall know, underſtand, or have notice that he is become a bankrupt, or that he is in inſolvent circumſtances.

131. Sect. 2. From and after the ſaid 29th *October* 1746, the obligee in any bottomree, or reſpondentia bond, and the aſſured in any policy of inſurance made and entered into upon a good and valuable conſideration, *bona fide*, ſhall be admitted to claim; and after the loſs or contingency ſhall have happened, to prove his, her, or their debt and demands, in reſpect to ſuch bond or policy of inſurance, in like manner as if the loſs or contingency had happened before the time of the iſſuing of the commiſſion of bankruptcy againſt ſuch obligor or inſurer; and ſhall be intitled unto and ſhall have and receive a proportionable part, ſhare, and dividend of ſuch bankrupt's eſtate, in proportion to the other creditors of ſuch bankrupt, in like manner as if ſuch loſs or contingency had happened before the commiſſion iſſued, and all and every perſon or perſons againſt whom, from, and after the ſaid 29th day of *October*, any commiſſion of bankruptcy ſhall be awarded, ſhall be diſcharged of and from the debt or debts, owing by him, her, or them, on every ſuch bond and policy of inſurance, as aſſigned, and ſhall have the benefit of the ſeveral ſtatutes now in force againſt bankrupt's in the ſame manner to all intents and purpoſes as if ſuch loſs or contingency had happened, and the money due in reſpect thereof had become payable before the time of the iſſuing of ſuch commiſſion.

132. Stat. 24 *Geo.* II. *cap.* 57. Sect. 9. And whereas many abuſes have been committed by bankrupts

rupts and perſons, who with their privity have attempted to prove fictitious and pretended debts under commiſſions of bankruptcy, in order that ſuch perſons might be enab'ed to ſign their conſent to the certificate, for diſcharging ſuch bankrupt from their debts, for remedy whereof, and in order to prevent the ſo fraudulent and wicked practices, for the future, be it enacted *&c.* that where any perſons ſhall fraudulently ſwear or depoſe, or being of the people called *Quakers*, affirm before the major part of the commiſſioners named in any commiſſion of bankruptcy, or by affidavit or affirmation exhibited to them, that a ſum of money is due to him or her from any bankrupt or bankrupts, which ſhall in fact not be really ſo due and owing, and ſhall in reſpect of ſuch fictitious and pretended debt, ſign his or her conſent to the certificate for ſuch bankrupts diſcharge from his debts that in every ſuch caſe, unleſs ſuch bankrupt ſhall, before the time that ſuch major part of the ſaid commiſſioners ſhall have ſigned ſuch certificate, by writing by him to be ſigned and delivered to one or more of the ſaid commiſſioners, or to one or more of the ſaid aſſignees of his eſtate and effects, under ſuch commiſſion, diſcloſe the ſaid frauds and object to the reality of ſuch debt, ſuch certificate ſhall be null and void to all intents and purpoſes, and ſuch bankrupt ſhall not in that caſe be intitled to be diſcharged from his debts, or to have and receive any of the benefits or allowances given or allowed to bankrupts by the ſaid act of the 5th *Geo.* II.

133. Sect. 10. And where the creditor or creditors of any bankrupt reſide in foreign parts, the letter of attorney of ſuch creditor atteſted by a notary public in the uſual form ſhall be a ſufficient evidence of the power and authority by which any perſon thereby authorized ſhall ſign any bankrupt's certificate, any thing in the ſaid act of the 5th of *Geo.* II. to the contrary notwitſtanding.

134. It is not * buying and ſelling of land, but of perſonal things, that makes a man a bankrupt, *March's rep.* 37. Selling alone will not make a bankrupt, unleſs he alſo buy, 2 *Keb.* 487. Nor buying alone, 1 *Siderf.* 299.

135. A * ſhoemaker is within 13 *Eliz. cap.* 7. for he lives by his credit, in buying leather, and ſelling it again in ſhoes, and not on his manual labour only, as labourers and huſbandmen do; for the thing bought and ſold under different forms is the leather; and though the ſhoemaker's labour is employed in the alteration of the form, yet men do not contract for the labour but for the thing itſelf. *Cro. Eliz.* 268. *Cro. Ja.* 584. *Cro. Car.* 31. 3 *Mod.* 330. *Crump. Barnes.*

136. An Ironmonger that buys rod-iron or bar-iron, and cauſeth it to be worked up into wares, may be a bankrupt, ſo may a Nailer, a Lockſmith, and alſo a clothier, who buys the wool, and makes it up into cloth. *Good. p.* 12,

137. A Vintner or Brewer may be a bankrupt, *Good.* 13.

138. A Weaver and Dyer are within the ſtatute; for they get their living by buying and ſelling, and therefore may have an action for calling them bankrupts. *Cro. Jac.* 584.

139. A carpenter that ſells wrought timber ſeems to be within the ſtatute, for he ſells the materials though altered by his workmanſhip, ſo that he gets his living by buying and ſelling out the timber; but it ſeems otherwiſe of a mere working Carpenter. 3 *Mod.* 155.

140. If one covenants with the king to victual the fleet at a certain rate, and thereupon buys up a great quantity of proviſion, *&c.* though with the ſurplus he victuals merchants; yet being originally deſigned for the uſe of the navy, it will not make him a trader within the act, and it is one act or contract only, and not a continued trading 1 *Vent.* 270. 2 *Show.* 270. *Sir Thomas Littleton's caſe adjudged*, 3 *Keb.* 451. *S. C.* See this caſe more at large in paragraph 164.

141.

* See parag. 5.

141. An Inn-keeper, as ſuch, cannot be * bankrupt, for though he buys proviſion to be ſpent in his houſe; yet he does not properly ſell them, but utter them at ſuch rates as he thinks reaſonable, and the attendance of his ſervants, furniture of his houſe, *&c.* are to be conſidered; and the ſtatutes only mention merchants that uſe to buy and ſell in groſs or by retail; and ſuch as get their living by buying and ſelling; now the contracts with Inn-keepers are not for any commodities in ſpecie, but they are contracts for houſe-room, trouble, attendance, lodging, and neceſſaries, and therefore cannot come within the deſign of ſuch words, ſince there is no trade carried on by buying and bartering commodities; and though in this caſe a jury ſhould find that the Inn-keeper got his living by buying and ſelling, it would not bring him within the ſtatute for the reaſons aforeſaid. *Cro. Car.* 549. 1 *Jones*, 437. *Criſp* and *Prat. March* 35. *S. C.* 3 *Lev.* 309. *S. P.* adjudged between *Newton* and *Trigg*, 3 *Mod.* 327. 1 *Show.* 268. 1 *Salk.* 109, 110. *Skin.* 291. *Comb.* 181. And in theſe books it is ſaid, that there is no material difference between an Inn-keeper and a maſter of a boarding-ſchool, who buys and dreſſes proviſions for young ſcholars.

142. A ſpecial verdict found, that *Bigge* was a freeman of *London*, and kept an Inn there, and that he bought all the things he ſold and uttered, by which he gained his living, that he had built a ſhip, and had a ſhare in her, and a ſtock there to the value of 50 *l.* that he abſented from his houſe, and that upon petition to the commiſſioners of the great ſeal a commiſſion of bankruptcy iſſued.

Holt, chief-juſtice and *Eyre* inclined, that an Inn-keeper is not within the ſtatutes; and in a ſubſequent term the court gave judgment with one voice, that an Inn-keeper is not within the ſtatutes of bank-

* Notwithſtanding the reſolutions in this and the next parag. it appears by the *London Gazett's*, that many commiſſions of bankruptcy have been taken out againſt *Inn-keepers* by the deſcription of *Inn-keepers* and *Chapmen*, and ſuch commiſſioners have been proceeded upon, and the bankrupts were allowed their certificates.

rupts; and alſo that the plaintiff having a ſhare in a ſhip, and a ſtock there for trade, it does not make him a trader within thoſe ſtatutes. And,

Firſt, That an Inn keeper is called in the law, *communis hoſpitator*, *viz.* he is a perſon who receives travellers, and provides neceſſaries for them, their horſes and attendants, and employs ſervants for that purpoſe; ſo that he is diſtinguiſhed by this from other traders.

Secondly, An Inn-keeper does not ſell by contract but delivers his goods to his gueſt as they require; and if he takes an exceſſive price, he may be indicted, which other traders are not; and he is under the correction of the juſtices, and if he miſgoverns his inn, he may be ſuppreſſed; for he is in the nature of a public perſon, and his gain does not ariſe from the victuals that he ſells, but from his furniture and attendance, as well as from his meat and drink, *&c.* And this is a trading to a particular purpoſe, and in a particular manner; and then he will not be within the ſtatutes, as was adjudged *per Hale*, chief-juſtice, in Sir *Thomas Littleton*'s * caſe, who bought victuals for the Navy; for though by it he gained great credit, and incurred debts to a great value, and though he uſually ſold victuals to others beſides the king, when the navy was ſufficiently ſerved; yet becauſe that his contract was for a particular purpoſe, he was not within the ſtatutes of bankruptcy.

And as to the difference of an Inn-keeper in London and in the country, *Holt*, chief juſtice, did not ſee any difference; for though an Inn-keeper in the country does not buy his hay and oats, yet he buys meat and bread.

And as to the ſecond point, he ſaid, the having part in a ſhip would not make him a trader; and cited Woolſtenholme's caſe; [See paragraph 51.] and the ſtock is not material, he not having employed it in trade. And he ſaid alſo, that the employing a ſum of money by way of venture in trade, would not make a man a trader; adjudged by the whole court

* See parag. 140.

court for the plaintiff. *Holt's rep.* 92. *Trin.* 2 *W.* and *M. Luton* and *Bigge.*

143. A man buying and ſelling, brings not the man within the ſtatutes, for they intend ſuch as gain the greateſt part of their living thereby; and therefore where a farmer bought and ſold cattle, it was adjudged that he was not a bankrupt: for a farmer is not within the ſtatute, becauſe he only ſells the profits originally raiſed from the ground, and if he buys in commodities, and ſells them again, this is only accidental. *March* 35. *Cro. Jac.* 549. 1 *Danv. Abr.* 987. See the next paragraph.

144. No Farmer, Grazier, or Driver of cattle, ſhall be deemed a bankrupt, 5 *Geo.* II. *cap.* 30. Sect. 40. But ſuch farmer, if he ſhall deal in wool, hops, or the like, ſhall be deemed a bankrupt; otherwiſe any perſon by taking a farm might avoid the ſtatutes. Alſo an Inn-keeper, if he ſhall buy corn and ſell the ſame again in quantities which are not conſumed in his houſe, may become a bankrupt. And in the caſe of *Mayo* and *Archer*, 8 *Geo.* I. A Farmer who planted potatoes, and ſold the ſame again, was adjudged a bankrupt. *Strange* 513. See paragraph 163.

145. The buying part of a ſhip makes no trading becauſe it is no buying and ſelling within the ſtatute, but the buying part in the ſhip, and the party's employing it in carrying and re-carrying goods for himſelf, is an evidence of trade, becauſe the exportation and importation of goods is the buſineſs of a merchant; but if a man buys a part of a ſhip which he lets to freight, this is no evidence of trade, for there is no exportation or importation; but if a man repairs a ſhip, (which is uſual) on the credit of the bottom, and afterwards takes a ſhare in it for his debt, and employs the ſhip in exportation, it has been held by ſome, that ſince in this he is compulſory, having no other way to obtain his debt, that it ſhall not be taken as an evidence of trading, becauſe this is only accidental, and not the way the

party hath put himſelf in to get his livelihood.. 1 *Sid.* 411. 1 *Vent.* 29. 2 *Show.* 268. 2 *Keb.* 487.

145. No member of the *Eaſt-India* company ſhall, in reſpect of his ſtock therein only, be liable to be a bankrupt within the meaning of any of the ſtatutes concerning bankrupts. 9 and 10 *W.* III. *cap.* 24.

146. No member of the bank of *England*, ſhall in reſpect of his ſtock therein only, be adjudged liable to be a bankrupt. Stat. 7 and 8 *W.* 3 *cap.* 31. The like clauſe is in every other act of parliament concerning that corporation ſince that time.

147. No member of the *South-Sea* company ſhall, in reſpect of his being a member, governor, director, or manager thereof, or having any ſtock therein, or by reaſon of any other matter in this act contained, be liable to be a bankrupt. 9 *Ann. cap.* 21. Like clauſe in the ſubſequent ſtatutes relative to this company.

148. No governor or director, or other officer of either the *Royal Exchange* aſſurance or *London* aſſurance corporations, ſhall in reſpect of his ſhare therein only be adjudged liable to be a bankrupt. 6 *Geo.* I. *cap.* 18.

149. If a trader gives over his trade and then contracts debts, and then goes into trade again upon a new ſtock, it ſeems upon the petition of ſuch intermediate creditors he cannot be made a bankrupt; becauſe ſuch creditors did not truſt him upon the credit of his trade. 1 *Sid.* 411. 2 *Show.* 268. 1 *Vent.* 5. *Comb.* 463. But if ſuch a perſon leaves goods in the hands of another to be diſpoſed of, and is to be partner with him in loſs and gain, he may be a bankrupt, for he ſtill carries on his trade by proxy: *Palm.* 325. *Haylor* and *Halls* caſe. But the having of a joint ſtock does not make a bankrupt without ſome proof of a diſpoſal thereof; for otherwiſe there is no commerce driven. 3 *Keb.* 487.

150. If

150. If a man contracts a debt, and after leaves off, and lives upon his estate in the country, and afterwards absconds for this debt, he is a bankrupt, because he lived by his trade when the debt was contracted; but if a merchant leaves off his trade, and after contract debts, and then sells off the surplusage of his goods, but hath neither factor, correspondent nor packer, he is no bankrupt. *Palm.* 325. 3 *Lev.* 17. 1 *Sid.* 411. 1 *Vent.* 5. 3 *Keb.* 451. Sir *Robert Cotton*'s case. But in 1 *Vent.* 166. Where the same case comes on again, the court holds that he is a bankrupt; otherwise the mischief would be great; for men cannot take notice when another withdraws his trade, or when he commands his factors beyond sea to deal no farther for him; but they seeing great quantities of goods and merchandize in his hands, are apt to trust him so that it is fit they should be relieved by the statutes. See this case more fully reported in the next paragraph.

151. This was an action of Trover and conversion for Goods and money assigned by the commissioners of bankrupts; and upon guilty pleaded, the question was,

Whether Sir *Anthony Bateman*, whose goods they were, was a bankrupt?

This cause was this term tried in the court of *Kings Bench*, and the plaintiff proved that sir *Anthony* had silk and other merchandize in his warehouse, and that on the credit of them, he borrowed divers sums of money, and sold them, but could not prove they were bought in after the debts contracted; or that he had exported any thing after, or a good while before, and to this the court delivered their opinions, *viz.*

That sir *Anthony Bateman*'s selling such merchandizes as were only the effects of his former trade (for he had been a *Turkey-merchant*, and had left off trade, and which goods he could not immediately put off on ceasing to trade) could not make him a trader, for the statute only extends to those that live by buying

and

and ſelling. Nor his having a part in a coal-ſhip, which was alſo one part of the caſe, and was alſo one *Cruſhaw*'s caſe, where the ſhip was only let to freight. But as to the ſhip the court were divided upon it, and notwithſtanding the direction of three judges againſt judge *Ramsford*, to the jury was that this did not make a merchant bankrupt, yet the jury found him bankrupt, and gave a verdict for the plantiffs, ſir *Robert Cotton*, and others, *viz.* that ſir *Anthony Bateman*, was a bankrupt; upon which Mr. *Siderfin*, who has alſo reported this caſe, in *fol.* 411. takes notice that the plaintiffs had the greater intereſt, and this was done with an intent to ſell *Bateman*'s lands, who often moved for a new trial, but could not obtain it., But this cauſe came on again in the ſame court, on a trial at bar, in *Midſummer* term 23 *Car.* II. and the queſtion on the trial again was.

Whether Sir *Anthony Bateman* was a bankrupt or not?

And it was proved that he was a *Turkey-merchant*, and that he traded in the year 1656, but it was not proved that after 1656, he imported or exported any thing; but that having the ſtock of his former trade on his hands, to a very great value, he ſhewed them to ſeveral and on the loan of them and their credit, he obtained divers large ſums of money; and the court now held that this brought him within the ſtatute for ſuch debts as he contracted, after 1656, and that otherwiſe the miſchief would be great; becauſe men cannot take notice, when another withdraws his trade, or when he commands factors beyond ſea, to deal no farther with him.

But perſons ſeeing great quantities of goods and merchandizes in his hands, are apt to truſt him, and therefore it is fit they ſhould be relieved by the ſtatute. 1 *Vent.* 29. *Eaſt.* 21 *Car.* II. Sir *Robert Cotton*, againſt *Daintry*.

152. If a trader become ſecurity for another, he is a bankrupt within the ſtatutes, becauſe he is truſted upon the reputation of his ſtock and dealings, as well

well where he is ſecurity, as where he contracts for his own debt. *Palm.* 325.

153. A man buys in *England* only, and ſells in *Ireland*, he may be a bankrupt, for many merchants buy beyond ſea, and ſell in *England* only, and others buy here and ſell beyond ſea; for it is trading that makes a man capable of being a bankrupt. *Raym.* 375. *Doweſworth* and *Anderſon*, 2 *Jones*, 141. *S. C.* 2 *Vern.* 162. *S. C. cited.*

154. A member of parliament may be a bankrupt; and no member who is co-partner in any trade is intitled to his privilege, as appears by the following order of the honourable houſe of commons, *viz. Veneris* 16 *die Novembris anno nono Georgii Regis* 1722.

Sir *George Caſwell*, ſtanding up in his place, and acquainting the houſe that he was willing to wave his privelege in the cauſe, wherein he is one of the defendants, depending in the court of *Chancery*, between him and *Alexander Urquhart*, Eſq; member of this houſe, whoſe petition is referred to the committee of privileges and elections, if the ſaid Mr *Urquhart*, would wave his privilege in the cauſe againſt him; and the ſaid Mr *Urquhart* in his place declaring that he would not inſiſt on his privilege, ordered,

That the committee of privileges and elections be diſcharged from proceeding on the petition of *Alexander Urquhart* eſq; complaining of Sir *George Caſwell*'s inſiſting upon the privilege of this houſe, as he is copartner with *Jacob Sawbridge* and *Elias Turner*.

Reſolved and declared, *Nemine Contradicente*, that no copartner in any trade or undertaking, is intitled to the privilege of this houſe, in reſpect of any matter relating to ſuch partnerſhip. See the next paragraph.

155. On the 23 of *June*, 1741, a joint commiſſion of bankruptcy was taken out againſt *John Caſwell* and *John Mount*, of *London*, bankers and partners, and Mr. *Caſwell* was then a member of parliament, and the parliament then ſitting; and, on the 27th of *February*, 1741; a ſeparate commiſſion was taken

taken out againſt the ſaid *John Caſwell*. *Dav.* p. 6, 7.

156. The ſtatutes againſt bankrupts have been extended to ſeveral perſons in the profeſſions of phyſic and law, in caſe they have been proved to trade or merchandize, or to buy and ſell goods: and alſo to private gentlemen, though never bred up to trade, but have only inveſted their money in trade, in order to make a better intereſt, notwithſtanding they have never acted or appeared in the trade, or been known to any perſons trading with the perſon they ſo lent money to, or been concerned in perſon, in the buying or ſelling any goods whatſoever. *Dav.* 7.

157. Bankers, brokers and factors are liable to the ſtatutes concerning bankrupts. See paragragh 119.

158. A feme covert ſole merchant, is a woman that is married, and carries on a trade, and has a ſtock and ſubſtance of her own entirely ſeparate from and independent of her huſband; and ſuch perſon may, by the cuſtom of *London*, ſue and be ſued in their own names, and are liable to have commiſſions of bankruptcy taken out againſt them, and the perſon, eſtate, and property of the huſband are no ways affected thereby.

There have been commiſſions of bankruptcy taken out againſt thoſe perſons, and one was taken out on the 20th of *March*, 1741, againſt *Mary Dennis*, of the pariſh of St. *Botolph*, without *Biſhopſgate*, linen-draper, ſole trader within the ſaid city, and wife of *Peter Dennis*, citizen and watch-maker of *London*; and it appearing in the commiſſion that no part of the eſtate and effects which were delivered by her to the commiſſioners any ways belonged to her huſband, a proper aſſignment was made of her eſtate and effects, and ſhe conformed herſelf in all reſpects to the acts relating to bankrupts; and on the 17th of *July*, 1742, her certificate was allowed under that deſcription. *Dav.* 23.

159. A

159. A pawnbroker, merely as ſuch, is not liable to the ſtatutes relating to bankrupts, becauſe he does not buy nor ſell for himſelf, and is only a common lender of money at intereſt, and the pledges which he ſells are for the benefit of the borrower: and, on the 18th of *September*, 1742, a commiſſion of bankruptcy was taken out againſt *Richard Read*, a pawnbroker; and the commiſſioners, in regard it did not at firſt appear to them that he was a trader, abſolutely refuſed to find him a bankrupt as a broker; but it afterwards being proved that he was a trader as well as a pawnbroker, the commiſſioners thought proper to find him a bankrupt as a pawnbroker, dealer and chapman.

And on or about the 17th day of *December*, 1737, a commiſſion of bankruptcy was taken out againſt *Robert Highmore*, of *Brick-lane*, in the pariſh of *White chapel*, in the county of *Middleſex*, pawnbroker and chapman; and he petitioned to have ſuch commiſſion ſuperſeded, inſiſting upon it in his petition, that, as a pawnbroker, he was not liable to the ſtatutes relating to bankrupts; but afterwards it was agreed between all parties, that the commiſſion ſhould go on, and he ſubmitted to the ſame; and on the firſt day of *April*, 1738, as appears by the *Gazette*, a dividend was made of his eſtate. Several commiſſions have been ſince taken out againſt pawnbrokers by the deſcription of *pawnbrokers and chapmen*. Dav. 24.

160. A common working taylor, who only makes clothes, is not, as has been held, liable to be a bankrupt; becauſe he only works as a ſervant for hire: but as their buſineſs is now greatly altered, and a good part of their trade conſiſts in buying and ſelling, ſo they are liable to the ſtatutes; and ſeveral commiſſions have been lately taken out againſt them by the deſcription of *taylors and chapmen*. Dav. 25.

161. And, in general, all perſons whatſoever, who get their living, or part of their living, by trade, and in buying and ſelling goods and merchandizes, are deemed to be liable to the ſtatutes relating

relating to bankrupts; except ſuch perſons as are excepted by the ſtatutes. *Dav.* 25.

162. The defendant was indicted for that he, being a bankrupt, and brought before the lords commiſſioners, he refuſed to give them an account of his effects; and his defence at trial upon not guilty pleaded, was, that he was an infant at the time of the debts contracted, and therefore could not be a bankrupt; and of that opinion was *Holt*: for, though the debts of an infant are only voidable at his election, yet no one can be a bankrupt for debts he is not obliged to pay; wherefore the defendant was acquitted. *Ld. Raym.* 443. The King againſt *Cole*.

163. In this caſe a ſpecial verdict was found, that one *Richard Baxter* rented a farm, for which he paid three hundred pounds a year, and that he planted potatoes on part of the lands which he farmed, and bought great quantities thereof to plant there, and that, for ſeveral years paſt, he dealt with divers perſons in potatoes at ſeveral times and places, and had employed warehouſes where he had put his potatoes, and ſerved ſeveral markets therewith; and had ſold great quantities thereof for profit and for his living, *&c.*

On this ſpecial verdict two points were made; *viz.* if the jury had found enough to make *Baxter* a trader within any of the ſtatutes made againſt bankrupts; and whether a farmer who ſells potatoes, though he buys ſeveral other large quantities thereof, and gets his living thereby, is within any of the ſaid acts. It was here argued, as to the firſt point, that the jury had found enough to make him a trader within the ſtatutes of bankruptcy; for, though farmers or inkeepers as merely ſuch, are not within thoſe ſtatutes, yet as traders they are: and here the jury have found not only that *Baxter* was a farmer but likewiſe a trader in potatoes, which he bought and ſold.

If

If a man hath ſeveral trades, and one is within, but another not within the ſtatutes, he ſhall nevertheleſs be adjudged a trader, ſo as to make him a bankrupt; and ſo ſhall a lawyer dealing in coals; and the dealing in one commodity more than another does not alter the caſe; for no perſon, except the trader himſelf, can tell in what commodity he moſtly deals; wherefore that trading which is the moſt viſible means of livelihood is to be regarded: and in this caſe it is apparent that by dealing in potatoes *Baxter* got credit, and probably of ſeveral perſons that did not know he rented a farm; but if he did not, yet there are ſufficient words in this verdict to make him a trader, it being found that he ſold ſeveral great quantities of potatoes.

The argument on the ſecond point was this, That in *England* there are many hop-merchants who have hop-yards of their own, but ſtill ſhall be accounted traders, ſo as to ſubject them to the ſtatutes of bankrupts; and this trade of dealing in potatoes, though *Baxter* was alſo a farmer, may be compared to the caſe where the plaintiff libelled for tythes of faggot-wood, and the defendant ſuggeſted for a prohibition, that no tythes ought to be paid for oak-faggots. The plaintiff, in his prayer for a conſultation, may ſhew that the defendant had ſo ſorted the faggots, that it was impoſſible for him to take the tythes of the one without the other.

It was anſwered by the other ſide, that this caſe, as found by the verdict, is not within the intention of any of the ſtatutes againſt bankrupts, becauſe it is found that *Baxter* got his livelihood by buying and ſelling of potatoes: here if he bought ſome and had ſome of the growth of the lands which he rented, he is not a trader within any of the ſaid ſtatutes; for a farmer that bought and ſold cattle was held no trader, ſo as to make him a bankrupt; nor an innkeeper, who lays in malt and corn; neither ſhall a a farmer who deals in turnips be accounted a trader.

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The court being here divided, no judgment was given; but two of the judges ſeemed to be of opinion, that where a man bought great quantities of wooll or hops, though he hath a farm and ſheep of his own, and ſeveral hop-gardens, he ſhall be deemed a trader in thoſe commodities; and ſo ſhall an innkeeper, if he turn corn-chandler. It is true the jury have not found that *Baxter* got the chiefeſt part of his livelihood by buying and ſelling potatoes; but it is not the quantity which is material, if it be in proportion to other goods that he buys and ſells; for if a perſon has an orchard, and buys ſeveral quantities of fruit of other people, though not ſo many as he hath in his own orchard, yet this ſhall make him a trader, and conſequently ſubject him to the ſtatutes of bankrupts.

The other two juſtices were of a contrary opinion, *viz.* that there was not enough found by the verdict to make *Baxter* a bankrupt. A farmer is no trader within any of the acts before-mentioned, as a farmer; and notwithſtanding he was of another trade, if that is not the principal means of his livelihood, he is not a trader within thoſe ſtatutes. It is indeed true, where buying and ſelling in any trade is the chief means of a man's livelihood, then he is a trader within the acts of bankruptcy; but that is matter to be given in evidence, and found by the jury, which was not done in this caſe: therefore they held that it was an inſufficient verdict; becauſe the jury did not find that *Baxter*, by buying and ſelling potatoes, got the chief part of his livelihood, or that it did exceed his farming trade; for all that the ſtatute requires, is, that trading ſhould be the chief matter to make him a bankrupt.

Upon the judges thus differing in their opinions in this caſe, the council for the plaintiff afterwards moved for a new *venire facias*, or that the court would give leave to mend this ſpecial verdict on the affidavit of one of the witneſſes at the trial; that

that *Baxter* bought potatoes ſeveral years, to the value of five hundred pounds *per annum*; and thereupon a rule was made for the other ſide to ſhew cauſe why the verdict ſhould not be amended; and they not ſhewing cauſe ſufficient, though it was inſiſted to be without precedent to amend the verdict, which is a record, by ſuch an affidavit; for being the ſame which was given in evidence before, the jury did not believe it; yet the court was of opinion, that a ſpecial verdict might be mended by notes taken by the clerk at the trial, or on proof of the certainty of what was there given in evidence; and the ſame was adjudged accordingly on payment of coſts. Mod. Caſ. in Law and Eq. 46, 47. Trin 7 *Geo.* I. in B. R. *Mahoe* v. *Archer*.

164. In *Trover*, by the aſſignees of the commiſſioners of bankruptcy of Sir *Thomas Littleton*, upon the evidence it appeared, that he, and two others, had covenanted with the king to provide victuals for the ſeamen that ſerved in the late *Dutch* war, at eight pence *per* man by the day; and after this they made a bargain with the purſers of the ſhips to provide for ſuch as ſerved in their ſhips at other rates agreed upon between them. The victuallers afterwards falling into the king's diſpleaſure, and being thereupon removed from their employment, and having a great ſum of money due from the king to them upon the contract aforeſaid, refuſed to pay the perſons, ſuppoſing, notwithſtanding their contract, that they were no debtors (being upon the king's account) until ſuch time as their accounts with the king were allowed; and ſo was ſaid was the uſage of the navy board: whereupon a commiſſion of bankruptcy iſſued forth; but the court, *viz. Hale*, *Rainsford*, and *Wild*, were clear of opinion, that this employment in buying up ſtores for victualling the fleet, did not make the victuallers traders; nor was it a buying and ſelling within the ſtatutes of bankrupts: and *Hale* ſaid, that every purveyor might as well be a trader, or a ſchoolmaſter that keeps board-

ers in his houſe: and though it was ſhewn, to enforce the matter, that where there was a redundancy of proviſions, they uſed to victual merchantmen; yet, in regard it was originally deſigned for the uſe of the navy, in purſuance of their contract with the king, they might well diſpoſe of the ſurplus to any other uſe. And then it was ſhewn that they victualled the *French* fleet alſo; and that was more than was contained in their firſt agreement with the king: but that being proved to be done by the king's expreſs order (though that order was not produced) the court held it was not ſufficient evidence to prove them traders.---But *Hale* ſaid, that they having made a contract with the king to provide for the fleet at ſo much a head, the king was not chargeable to thoſe with whom they contracted; and therefore that contract with the purſers of the ſhips would make them debtors to them: but upon the other matters they directed the jury to find for the defendant. *Vent.* 270. *Keb.* 451. *Eaſt.* 27 *Car.* II. B. R. *Gibſon* v. *Thompſon.* Sir *Thomas Littleton*'s Caſe.

165. [See paragraph 5.] A wealthy merchant goes beyond ſea with a good cargo, and ſtates his accounts with his creditors, who know of his voyage and are pleaſed therewith; and he ſends over ſeveral effects to them, and they truſt him in the way of merchant-factor; and, after five or ſeven years ſpace, he by loſſes becomes inſolvent, and abides beyond ſea. Serjeant *Gooding* conceives this is not within the ſtatute 13 *Eliz. cap.* 7, which ſaith, that this withdrawing, or abſenting, *&c.* muſt be on purpoſe *to defraud his* creditors; and this can never be conſtrued ſo: and we muſt imagine, after his inſolvency, he muſt ſtay to get up his effects. *Gooding*, p. 20.

166. If a merchant or trader goes abroad to a foreign country, where the nature of his buſineſs, and his neceſſary and lawful occaſions may require him, and he leaves a perſon behind him to act for him,

him, and to ſettle his accounts, and to pay his debts, or bills of exchange, if any, that may be drawn upon him; in all ſuch caſes, where it is not with an intent to defraud his creditors, ſuch departure hath been deemed not to be an act of bankruptcy; and if it were, it would be the higheſt reſtraint on the liberty of the ſubject: but if he goes away, and makes no ſuch proviſion, the law will ſuppoſe he went away to avoid his creditors; and therefore, in all caſes where a perſon is to be found bankrupt by a jury, the intention of ſuch fraud againſt his creditors muſt be ſtrongly proved; and that is the reaſon why the court of Chancery does not confine itſelf to the ſtrict words, but to the equity and true meaning of the acts of parliament; and for that purpoſe ſends the parties to law, to try upon an iſſue, whether a perſon againſt whom a commiſſion was taken, is bankrupt or not; for the commiſſioners finding a perſon to be a bankrupt, and their proceedings therein, does not conclude the perſon ſo found bankrupt*, no more than the grand jury's finding a bill for felony proves the perſon to be guilty before trial: but ſuch perſon ſo found bankrupt, has ſtill a liberty to try the ſame by a jury at common-law; and, if the jury find the perſon bankrupt, then the commiſſion proceeds; if not, the lord-chancellor generally ſuperſedes the ſame; and ſometimes, according to the caſe, with coſts againſt the petitioning creditor. *Dav.* 42.

167. A gentleman of the *Temple* went from thence to *Liſbon*, where he turned factor and traded to *England*, and broke. It was inſiſted upon that the ſtatutes of bankruptcy did not extend to perſons out of the realm, the ſubject of them being caſes of arreſts, outlawries, and departing the realm: and

* Though the commiſſioners declare him bankrupt, he may traverſe it, *Palm.* 325. 8 *Co.* 121. 4 *Inſt.* 277.

that 21 *Jac.* I, (ſee paragraph 34) which extends to aliens, is to be underſtood of aliens here; but the court held him a bankrupt by reaſon of his trading hither and back again; which gained him a credit here. 1 *Salk.* 110. *Bird* and *Sedgwick*, on a trial at bar.

168. If a man keeps his houſe for a long time, this does not immediately make him a bankrupt; but if he conceals himſelf within his houſe, but for a day or an hour, *to delay or defraud his creditors*, he is a bankrupt. *Palm.* 325.

169. If there be a proceſs out againſt a merchant, who thereupon keeps houſe to ſave himſelf from an arreſt, and after goes out to market and other places, but hearing of a new proceſs, keeps houſe again, and after goes at large, *per Cur.* he is no bankrupt; becauſe, though the keeping houſe is an act of bankruptcy, for which a commiſſion might have been taken out at that time; yet, by his going abroad afterwards it is purged; for, tho' the ſtatute makes the keeping of houſe an act of bankruptcy, yet it muſt be underſtood of a keeping in order to conceal himſelf. *Cro. Eliz.* 13. *Godb.* 25 1 *Lev.* 13. 2 *Sid.* 177.

170. An iſſue was directed out of Chancery to try whether a perſon was a bankrupt or not at ſuch time. The lord-chief-juſtice *Holt* was of opinion, that, if *H.* commits a *plain act* of bankruptcy, as keeping his houſe, *&c.* though he afterwards goes abroad, and is a great dealer, yet that will not purge the firſt act of bankruptcy, but he will ſtill remain a bankrupt: but if the act was not plain, but doubtful, then going abroad, and dealing, *&c.* will be an evidence to explain the intent of the firſt act, becauſe, if it was not done to defraud his creditors and keep out of the way, it will not be an act of bankruptcy within the ſtatute: alſo, if after a a plain act of bankruptcy, he pays off, or compounds with his creditors, he is a new man. 1 *Salk.*

1 *Salk.* 110. 1 *Lev.* 13, 14, 17. 2 *Show.* 253, 512. *Holt's Rep.* 95. *Hopkins* and *Ellis*, *Trin.* 3 *Ann.*

171. If a trader abſents himſelf for fear of being arreſted by a writ *de excommunicato capiendo*, or if a decree in Chancery be made againſt him to execute a conveyance, and he keeps houſe, or withdraws himſelf for fear of being attached, for not performing the decree; ſuch withdrawing doth not make him a bankrupt. *Stone*, 10. It may, perhaps, be otherwiſe, if ſuch decree had been for payment of money, as it was held in the caſe of one *Albyn*, a *Turkey* merchant. If a trading churchwarden keeps the church, that is, either a keeping his houſe, or taking ſanctuary. So if a miller keeps in his mill, that is a keeping his houſe. *Gooding*, 22. *See the following paragraph.*

172. If one, who hath an houſe, abſents himſelf for fear of arreſt for a time, and then returns, yet he is a bankrupt. Suppoſe a man hath no dwelling-houſe, but ſojourns ſometimes at one place, and ſometimes at another; yet, if he appears not at his uſual times and places of trade, as formerly, nor can be found as formerly; this is within the words of 13 *Eliz.* c. 7. [*or otherwiſe abſent himſelf*]. So a lodger in a chamber. Yet, *Quære*; for if he ſometimes abſents himſelf, and at other times, when he thinks himſelf ſafe from arreſt, appears publicly, as upon the open *Exchange*; this ſeems to be a purging of his abſenting or withdrawing himſelf before, as it was held in the caſe of *Hind* the banker, who was ſometimes denied at his houſe, though within; yet afterwards appearing upon the open *Exchange*, it was held, that this appearing publicly, purged ſuch his denial or abſence. 3 *Cro.* 13.

173. [See paragraph 5.] Sanctuary is a place privileged for the ſafe-guard of offenders lives, being founded upon the law of mercy, and the great reverence and devotion which the prince bears to the place to which he grants ſuch privileges. Sanctuaries

were firſt granted by king *Lucius* to our churches and their precincts; and among all other nations, our ancient kings of *England* ſeem to have attributed moſt to thoſe ſanctuaries, permitting them to ſhelter ſuch as had committed both felonies and treaſons; provided they acknowledged their faults within forty days, and ſubmitted themſelves to baniſhment; during which ſpace, if any layman expelled them, he was excommunicated; and if a clergyman, he was made irregular. *Mat. Weſt. Fleta. lib.* 1. *cap.* 29. *Weſtminſter* had an eminent ſanctuary belonging to it, granted by king *Edward* the Confeſſor: and ſo had *St. Martin's le Grand* in *London.* 21 *Hen.* VIII. *&c.* Sanctuaries were aboliſhed here by the ſtatutes 26, 28, and 32 *H.* VIII. and 1 and 2 *Ed.* VI. *See the following paragraph.*

174. The conſtruction which is now to be put upon the word *ſanctuary*, is when a perſon takes refuge in any place where the law cannot be ſo readily executed upon him, and to delay the payment of his debts to his creditors, *viz.* within the verge of the court, or in the *Mint*, before the act of parliament deſtroyed the privilege of that place, or in any other particular place of refuge; and when a perſon abſconds, or retires to ſuch places, without the conſent of his creditors, it is deemed an act of bankruptcy. *Dav.* 91.

175. If the ſteward or lieutenant of the tower of *London*, or a governor of a caſtle, or any perſon reſiding therein, that uſes merchandize, and is indebted, and keeps in the *Tower*, or in ſuch a caſtle, to avoid his creditors, he is a bankrupt. *Id. ibid.*

176. If a merchant abſconds, and enliſts himſelf a ſoldier in the king's ſervice, or buys a captain's commiſſion, this is an act of bankruptcy; but otherwiſe, if a trader be preſſed into the king's ſervice. *Gooding.* 22.

177. If a man abſents himſelf for felony, it is not an act of bankruptcy, it not being to defraud or de-

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lay the creditor of his juſt debt or duty due to him. *Dav.* 91. Nor is a man's lying in priſon for a criminal matter, an act of bankruptcy. *Gooding*, 26.

178. If a man will, by colluſion or fraud with any other perſon, permit ſuch perſon to take out a feigned, or, according to the common phraſe, a *ſham* action againſt him, and ſuffer an execution to be had againſt his eſtate or effects, ſo as to deprive the reſt of his creditors of a juſt remedy which they might have againſt him, or ſuch eſtate or effects, and under ſuch fraud protects his eſtate from them; this is an act of bankruptcy, becauſe it is voluntary. But, in order to make it a compleat act of bankruptcy, his lying in priſon two months, without putting in bail, ought to be proved. *Dav.* 93. This clauſe is to be underſtood of voluntary and feigned actions; as, running into the King's bench or Fleet priſon. *Gooding*, 23.

179. (See paragraph 5) As to the outlawry, if a jury, on a verdict, find a man to be outlawed, it muſt be proved to be done *in fraudem creditorum*, or to defraud his creditors. A man may be ſo unfortunate as to be outlawed, and know nothing at all of the matter, and may afterwards come and procure the outlawry to be reverſed; and if ſo, it is not an act of bankruptcy. *See the following paragraph.*

180. In ejectment on a ſpecial verdict it was found, that Sir *John Harriſon* being ſeized, became bankrupt; and in the year 1644-5-6, he was outlawed, at the ſuit of three ſeveral perſons; and in 1648, Sir *John Harriſon* ſold to the leſſor of the plaintiff, *Bona fide.* The jury did not find that he was outlawed in 1645, to defraud his creditors, which by Serjeant *Wild*, is neceſſary, otherwiſe a man ſhall not be a bankrupt. And it was alſo ſaid in this caſe, by Serjeant *Maynard*, that neither outlawry, nor going beyond ſea, made a man a bankrupt, unleſs, as the ſtatute ſays, it be with an intent to defraud creditors. 1 *Keb.* 11. 2 *Sid.* 69, 114, 176. *Radford*, v. *Blidworth*, *Bateman*, and others.

181. One outlawed in the county palatine of *Durham* is a bankrupt; but contrary in *Ireland*; for the record is not pleadable here. *Billinghurſt*, 95. *Stone*, 172.

182. Upon an *Engliſh* bill in the Exchequer, the barons prayed the opinion of the judges of *C. B.* The caſe was, *H.* becomes bankrupt, and not long after was outlawed; the king made a leaſe of the profits of his lands, and alſo a grant of his chattles; afterwards a commiſſion of bankruptcy was taken out; and the queſtion was, Whether, or how far, this outlawry, leaſe, and grant, ſhould prejudice the creditors of the bankrupt?

And firſt, it was taken for certain, that, when a perſon is indebted to the king, and alſo to a ſubject, the king ſhall have preference in payment. Secondly, that no ſubſequent act of bankruptcy can defeat the intereſt his creditors have by his bankruptcy in his eſtate. Thirdly, that the king hath, by common law, ſuch a power to require his ſubjects to anſwer all demands of law and juſtice, that not appearing upon proceſs is ſuch a contempt of law, that a perſon guilty is put out of the law, and forfeits his goods and chattels. 11 *H.* 6. 17. his leaſes for years 9 *H.* 6. 21. and his truſt in ſuh leaſe 2 *Roll.* 807. *Hob.* 214. and his profits of his lands of freehold, 9 *H.* 6. 20. 21 *H.* 7. 7.

Reſolved therefore, firſt, That the creditors are not hurt by the outlawry, for that was his own act and by his own default, and the voluntary permiting himſelf to be outlawed, ſhall not prejudice them, 2 *Sid.* 115. Secondly, That the aſſignee of the king's leaſe, having paid thirty-ſeven pounds for it, is a purchaſer within 21 *Jac.* I. *cap.* 19, not to be impeached by the commiſſion ſued out five years after the bankruptcy. *Salk.* Rep. *Pain et al.* v. *Teap. et al.*

183. This departure, or removal, from their dwelling houſes, muſt, as before obſerved, [*See paragraphs*

ragraphs 166, 167, and 168.] be proved to be done with an intention to defraud their creditors; for it is not the bare departure of a man from his dwelling-houſe, that can make him a bankrupt, unleſs it is done with that intent. For, ſuppoſing a perſon in an indifferent ſtate of health, ſhould go to *Bath*, *Briſtol*, *Scarborough*, or to any other part of *England*, for a conſiderable time, and ſtay there ſeveral months for the recovery of his health: or, if a trader in *London*, or elſewhere, ſhould go a long country journey, which is every day done in moſt trading towns in *England*, to carry on his trade and correſpondence, ſuch departure, if he is viſible, and within the reach of the laws of his country, and he leaves word with his family where he is gone, or may be ſent to, has not been deemed to be an act of bankruptcy; and the meaning of departure from a perſon's houſe, in order to make it an act of bankruptcy, muſt be attended with an ill intention; and that ill intention muſt be proved to be done with a deſign to hide himſelf in ſome ſecret place, in his own country, where it may be difficult to find him out, and where his creditors cannot reſort to, or have a communication with him, or know where ro ſue him for the recovery of their debts, if there ſhould be occaſion. *Dav.* 96, 97.

184. As to procuring himſelf to be arreſted [*See paragraph* 178] and as to cauſing his goods, money, or chattels, to be attached or ſequeſtred, that may be done by ſuffering judgment to go againſt him wilfully by default; for want of pleading, or by permitting his effects by contrivance to be ſequeſtred or ſeized, or by letting a perſon attach his goods where no juſt debt is due to him, or by confeſſing a fraudulent, judgment, for a ſum of money not actually due, or for a much larger ſum than is due, in order to cover his effects, and permitting execution to be taken out for a larger ſum. All theſe are fraudulent

lent, and acts of bankruptcy. But, if a perſon is minded, before he becomes a bankrupt, to give a preference to one creditor before another, and confeſſes a judgment for a ſum that is actually and juſtly due, and execution is taken out on ſuch judgment for ſuch ſum, little more or leſs than the ſum due; the confeſſing ſuch judgment is not, as hath been held, an act of bankruptcy. *Dav.* 97, 98.

185. A merchant hath an impropriate rectory, the choir is not repaired, the tithes are ſequeſtred; it is no ſequeſtration within this ſtatute. For, though this is his default in not repairing the church, yet it is not of his immediate procuring. So in caſe of other attachments out of any court. *Stone*, 172. *Billinghurſt*, 92.

186. It was ruled by *Holt*, chief juſtice of the King's Bench, at *niſi prius*, at *Guildhall*, upon evidence in a trial; firſt, That if the goods of *A.* be ſeized upon a *fieri facias*, iſſued upon a judgment obtained againſt *A.* and after the ſeizure *A.* becomes bankrupt; this act of bankruptcy cannot affect the goods levied in execution, as aforeſaid; but if *A.* was a bankrupt before the ſeizure, and after the bankruptcy, the ſheriff, upon a writ of *fieri facias*, to him directed upon a judgment obtained againſt *A.* ſeizes the goods and ſells them, and a commiſſion of bankruptcy is granted, and the ſaid goods aſſigned by the commiſſioners, the aſſignee of the commiſſioners may maintain trover againſt the vendee of the goods: but no action will lie againſt the ſheriff becauſe he obeyed the writ. Secondly, if a trader, hearing that a writ of *fieri facias* was iſſued againſt him, to the intent to preſerve his goods from being levied in execution, clandeſtinely conveys them out of his houſe, and conceals them privately, that does not amount to an act of bankruptcy. Thirdly, That a ſeizure of part of the goods in a houſe, by virtue of a *fieri facias*, in the name

name of the whole, is a good ſeizure of all. Fourthly, it was reſolved, in this caſe, That, if goods of *A.* are ſeized upon *a fieri facias*, and ſold by *B. bona fide*, upon valuable conſideration, though *B.* permits *A.* to have the goods in his poſſeſſion upon condition that *A.* ſhall pay to *B.* the money, as he ſhall raiſe it by the ſale of the goods, this will not make the execution fraudulent; and in ſuch caſe a ſubſequent act of bankruptcy by *A.* will not defeat the ſale; but, though the original debt was juſt, yet, if the execution was fraudulent, *viz.* upon any truſt, a ſubſequent act of bankruptcy will defeat it. Lord *Raym.* 724. *Hill.* 10 *Will.* III. *Cole, v. Davies, et al. aſſignees of Maul, a bankrupt.*

187. This was an action of treſpaſs brought by the plaintiff againſt the defendant, who claimed by ſeveral leaſes under one and the ſame perſon; and, upon demurrer, the plaintiff, in his replication, avers, that the defendant's leaſe was made upon fraud, but ſhews not any fine paid by himſelf for his leaſe, nor any rent received thereon, nor any other valuable conſideration; upon which the defendant demurred thereto; and *Yelverton* ſaid, that, by the common law, there was not any fraud remedied which ſhould defeat the after-purchaſe, but only that which was committed to defraud a former intereſt, which the court granted, and the ſtatute of the 27th of *Eliz.* did not remedy it; for there was no more conſideration paid for the ſecond leaſe than for the firſt, and therefore not aided by the ſtatute; and the plaintiff was not a perſon entitled to the benefit thereof: and in this theſe points were laid down; *viz.* that it was clear that a fraudulent conveyance was not made void againſt all by that ſtatute, but only againſt thoſe who afterwards came by the land upon good conſideration, and thoſe were the words and intent of the ſtatute. It was alſo ſaid, that if a fraudulent gift be made of goods, it is not fraud by the ſtatute of 13 *Eliz.*

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againſt all, but only againſt his creditors; but remains good againſt the donor himſelf: and in this caſe, *Croke* ſays thus: "I was privy to a caſe which was reſolved by the two chief juſtices and three other juſtices; *viz.* one made a leaſe for eighty years, without conſideration, and afterwards conveyed the land to his wife for a jointure after marriage; and they reſolved, becauſe this laſt conveyance was voluntary, and without any valuable conſideration, that the wife could not avoid the former leaſe: and *Owen*, juſtice, agreed with them in all points, and ſaid, that he was at the making of this ſtatute, wherein ſpecial care was taken, that there ſhould not be any words which ſhould extend to purchaſers, but ſuch as paid money, or other good conſideration, for their purchaſe, and therefore they adjudged it for the defendant. 1 *Cro.* 444. *Upton*, v. *Baſſet*. *Mich.* 37 *Eliz.*

188. The plaintiff's husband, after marriage, enters into a voluntary bond to ſettle a jointure of the value of----------upon his wife, and afterwards ſettles lands of that value upon his wife in jointure; and thereupon the bond was delivered up to be cancelled: the huſband dies, and the jointreſs is evicted: the bill was, that the wife being adminiſtratrix of her husband, might retain of her huſband's perſonal eſtate againſt the defendants, who claimed a ſhare of the perſonal eſtate upon the ſtatute of diſtributions, to the value of her jointure; *there being no creditors in the caſe.*

The court ordered, that, in regard the plaintiff was now entitled to dower, that ſhe ſhould proceed at law for recovery thereof; and what the ſame ſhould fall ſhort in value of the jointure, ſhould be retained by her out of the perſonal eſtate, notwithſtanding the bond was after marriage and voluntary, and delivered up to be cancelled; for an agreement, though voluntary, under hand and ſeal, ought to be decreed by this court; and the delivery up of the bond

bond by a feme covert, could no way bind her intereſt. 1 *Vern.* 427. *Hil.* 1686. *Beard.* v. *Nutthal.*

189. Goods were taken in execution in the poſſeſſion of plaintiff, who had them by virtue of a ſale from *G.* upon which the plaintiff brought an action. The defendant inſiſted, that the ſale to the plaintiff was fraudulent againſt him, he being a creditor by judgment. *Holt*, chief juſtice, ſaid, that if the judgment was upon a point tried, that then he need not prove the conſideration, for then it ſhall be intended good: but if it be a judgment by confeſſion he ought to prove it to be for a juſt debt; otherwiſe he ſhall not overthrow the ſale, though it be fraudulent, for it is good againſt all *but creditors for a juſt debt*, bona fide *due*. *Holt*'s Rep, 327. *Skin.* 586. *Saunders*, v.-----.

190. The bill, in this caſe, was, by the plaintiff, as aſſignee under a commiſſion of bankruptcy, to have the benefit of an eſtate charged to belong to the bankrupt, which the bankrupt, before any act of bankruptcy, in conſideration of ſix hundred pounds paid to him by his wife's brother, and of four hundred pounds promiſed by the brother to be further paid, had conveyed to truſtees to the uſe of himſelf for life, remainder to his wife for life for her jointure; remainder to other truſtees for a term of ninety-nine years; remainder to the firſt and other ſons, *&c.* of the bankrupt by his wife: and this ſettlement being made after marriage, it was inſiſted not to be good as againſt the creditors; and if it was good, yet that, there being no truſt declared of the ninety-nine years term, it reſulted back to the uſe of the bankrupt, the grantor; and conſequently, that the aſſignees had a right to diſpoſe of this term ſubject to the eſtate for life to the wife.

Lord *Hardwicke*, chancellor, held the ſettlement to be upon a valuable conſideration, and good; and that the term ſhould not reſult back to the bank-

bankrupt as a beneficial term; but, that it ought to attend the inheritance according to the limitations in the ſettlement.

In this caſe, where the ſettlement was produced on the ſide of the defendants, it appeared to be an indenture of releaſe: and thereupon the council for the plaintiffs called for the leaſe for a year; and the defendants not being able to ſhew any, it was inſiſted for the plaintiffs that this was no conveyance: But lord *Hardwicke*, chancellor, without ſuffering it to be argued, declared, that the want of a leaſe for a year would not, in equity, whatever it might at law, vitiate the conveyance; for that, if no leaſe for a year at all had been made, it is a defect that a court of equity ought to ſupply, where the conveyance appears to have been made, as in this caſe, upon a valuable conſideration. Dict. Tr. & Com. Title bankrupts. *Mich.* 18 *Geo.* II. *Jones* v. *Brown.*

191. A man having bequeathed the reſiduum of his perſonal eſtate to the wife of *J. S.* who did not appear to have been then indebted to any perſon whatſoever. Soon after *J. S.* agreed to ſettle, and did ſettle and aſſign this reſiduum to truſtees for the ſeparate uſe of his wife, but with a proviſo that the truſtees might, in their diſcretion at any time after, lend any part of the money to *J. S.* to employ in trade. Before the making of the ſettlement, *J. S.* received one hundred pounds, part of the reſiduum, and after making the ſettlement, the truſtees lent him four hundred pounds. After this, *J. S.* contracted ſeveral debts, and became a bankrupt. The bill was brought by the truſtees againſt the bankrupt, and his aſſignees, that they might be admitted creditors for five hundred pounds under the commiſſion.

Lord *Hardwicke*, chancellor. The ſettlement being made before the bankrupt was indebted to any perſon, appears to be a fair ſettlement, and not to be

be avoided as fraudulent by the ſtatute of *Eliz.* and held as to the four hundred pounds, that the plaintiffs ought to be admitted creditors under the commiſſion, but that the one hundred pounds ought to be conſidered as a payment to the husband, and decreed accordingly.

N. B. The truſtees had applied to the commiſſioners, *&c.* under the commiſſion, to be admitted creditors, but were rejected. *Dict. tr. & Com.* Title Bankrupts. *Hil.* 16 *Geo.* II. *Biddlecome*, v. *Marlow.*

192. *Willian Tappendon*, ſon-in-law to the plaintiff, made a mortgage for ſecuring to the plaintiff fourteen thouſand pounds, and intereſt, dated 1729, of a leaſehold eſtate and three hoys; and afterwards, in 1733, became a bankrupt. Plaintiff brought his bill againſt the aſſignees to have ſatisfaction for his money, or that the defendants might be foreclоſed. *Tappenden* continued in poſſeſſion of the leaſehold eſtate, and navigated the hoys, and appeared as the viſible owner to the time of his bankruptcy; and, during that time, made an abſolute bill of ſale of one of the hoys to one of his ſervants to protect him from being preſſed. Solicitor-general *Verney* and *Melmouth*, inſiſted that the mortgage was void, as againſt the creditors, by the ſtat. of king *James*, the plaintiff continuing in poſſeſſion of the hoys, and appearing as viſible owner of them, to the time of the bankruptcy. The ſtat. of 21 *Jac.* I. *cap.* 19, ſect. 11, ſays, Be it enacted, that, if at any time hereafter, any perſon, or perſons, ſhall become bankrupt; and at ſuch time as they ſhall become bankrupt, ſhall, by the conſent or permiſſion of the true owner, or proprietary, have in their poſſeſſion, order, and diſpoſition, any goods or chattles whereof they ſhall be reputed owners, and take upon them the ſale, alteration, or diſpoſition, as owners, that in every ſuch caſe the commiſſioners are to diſpoſe thereof, as fully as any other part of the bank-

bankrupt's eſtate: and, in ſect. 13, the commiſſioners have a power to diſpoſe of the bankrupt's eſtate, goods, &c. in mortgage, upon tender of the money before the condition broken. They inſiſted that this caſe was within the inconvenience provided againſt by the act of parliament; ſeeing it gives the bankrupt a falſe credit, in order to the defrauding of his creditors. *Melmouth* cited *Twine*'s caſe in the third Rep. of *Coke*; for the plaintiff urging that it would be very inconvenient to tradeſmen, if they were obliged to diſpoſe of their goods whenever they wanted to raiſe a ſum of money. As to the falſe credit, it is true the bankrupt has a credit by continuing in poſſeſſion; but, at the ſame time, his eſtate is encreaſed as much as by the money he received; and it would be very hard if the creditors ſhould have the benefit of the plaintiff's money, and yet, at the ſame time, take his ſecurity from him. He inſiſted, that the ſection before cited intended only ſuch goods, the property of which was abſolute in another; and not ſuch goods as were mortgaged; becauſe, in the thirteenth ſection, it is ſaid, in what manner the commiſſioners are to diſpoſe of lands or goods in mortgage.

Lord chancellor ſaid, that, as this was a fraudulent tranſaction, as to the leaſehold eſtate, it cannot be ſaid that the mortgage of the hoys is to be conſidered as fraudulent; and therefore *Twine*'s caſe is different from this, as there was the appearance of fraud in that caſe. As to the hoys, the ſingle queſtion is, Whether this tranſaction is within the ſtatute of king *James?* The bankrupt continued in poſſeſſion, and made an abſolute bill of ſale to one of his ſervants, and appeared the viſible owner, but paid the intereſt for the one thouſand pounds pretty regularly. If this had been an abſolute bill of ſale to the plaintiff of theſe hoys, and the bankrupt had continued in poſſeſſion of them afterwards, there could have been no doubt but that would have been

been within the act of parliament; but in the preſent caſe, the bill of ſale is ſubject to a redemption, and the abſolute property is certainly not in the mortgagee; yet, in law, the mortgagee is conſidered as abſolute owner: "therefore the ſafeſt way," ſaid his lordſhip, "is to conſider this as within the meaning of the act of parliament;" though he ſaid, at the firſt view of the caſe, his opinion was otherwiſe. In this view of the caſe, it appearing, that the leaſehold eſtate and the hoys were not worth the money they are charged with by the mortgagee, what reaſon could there be that the plaintiff ſhould let the poſſeſſion continue in the bankrupt, when his intereſt became abſolute? It is true it was kind to the bankrupt, but why ſhould other perſons ſuffer by his kindneſs? And, ſince ſomebody muſt ſuffer, it is moſt reaſonable he who by his *laches* occaſions this queſtion, ſhould be the perſon. This clauſe is not built ſo much upon the fraud as the inconvenience that would ariſe if perſons were to appear as viſible owners of things which do not belong to them. The other ſection in relation to mortgages does not alter the conſtruction of this clauſe; defendant ſubmitting to be foreclоſed of the leaſehold eſtate ordered the maſter to ſet a value upon it and the plaintiff to come in for the reſidue under the commiſſion, and no coſts on either ſide. *Dict.* Tr. and Com. Title Bankrupts. 5 *July*, 1736. *Stephens*, v. *Bole*.

193. [*See paragraph* 35.] Mr. *Robert Burchall* was a money-ſcrivener, and had uſed the buſineſs for ten years in the city of *London*; but meeting with misfortunes in life, he was arreſted, and afterwards charged in execution in the cuſtody of the marſhal of the court of King's Bench, at the ſuit of Mr. *Thomas Tribe*, one of his creditors, where he continued for ſeveral months; and ſome time afterwards, Mr. *Tribe* applied for a commiſſion of bankruptcy againſt him.

On the 20th of *March*, 1742, Mr. *Burchall* preferred his petition to the lord chancellor, and ſet forth, that he was a money-ſcrivener, and the clauſe of the ſtat. 21 *Jac.* I. *cap.* 19, ſect. 2, [*See paragraph* 35.] and alſo the clauſe of the ſtatute of 10 *Ann. cap.* 15. *See paragraphs* 63, 64.

And, by this petition, *Burchall* ſet forth, that he never followed any other trade, or profeſſion, and therefore he prayed that no commiſſion of bankruptcy might be awarded againſt him until he had an opportunity of being heard by council what he had to offer why the ſame ſhould not iſſue.

On the 2d of *April*, 1742, this petition came on before Lord *Hardwicke*, chancellor; and upon hearing council for *Burchall* and *Tribe*, and the petition and an affidavit of the petitioner; and the clauſes in the ſtatute of 21 *Jac.* and 10 *Ann.* read, and what was alledged on both ſides, his lordſhip ordered, that *Tribe* ſhould be at liberty to ſue out a commiſſion of bankruptcy againſt *Burchall*; and, in caſe the major part of the commiſſioners ſhould declare *Burchall* to be a bankrupt within the intent of the ſeveral ſtatutes, then he directed that the commiſſioners ſhould forthwith execute a proviſional aſſignment of *Burchall*'s eſtate and effects to an aſſignee, to be appointed by them under the ſaid commiſſion; and directed all further proceedings to be ſtaid till further order, and that the petition ſhould be adjourned over to the next day of petitions.

On the 18th of *May*, 1742, this matter came on again before his lordſhip, upon the two ſeveral petitions of the ſaid *Robert Burchall* and *Thomas Tribe*: and the order his lordſhip made, recited the firſt petition of *Burchall* and the ſubſtance of the laſt order: and further ſets forth, that *Tribe* had, on the 24th of *April* laſt, preferred his petition to his lordſhip, ſhewing that, purſuant to his ſaid order, a commiſſion of bankruptcy had iſſued, and that the major part of the commiſſioners had declared

clared the ſaid *Robert Burchall* a bankrupt before the ſuing forth the ſaid commiſſion, and had executed a proviſional aſſignment of his eſtate and effects to the ſaid *Thomas Tribe*, whom they had appointed aſſignee: and *Tribe* therefore prayed that he might be at liberty to proceed under the commiſſion againſt *Burchall* as a bankrupt, in ſuch manner as the law directs: and, upon hearing council for the petitioner, *Burchall*, and the petitioner *Tribe*, his lordſhip did order, that the major part of the commiſſioners in the ſaid commiſſion authorized, ſhould proceed in the execution of the ſaid commiſſion, according to the laws and ſtatutes then in force againſt bankrupts: and *Tribe* being preſent in court, and admitting that he had charged *Burchall* in execution, in cuſtody of the marſhal of the court of King's Bench, at his ſuit, and electing to ſeek relief for his debt under the commiſſion, and he being the creditor on whoſe petition the ſaid commiſſion iſſued, his lordſhip did therefore further order, that the ſaid *Tribe* ſhould forthwith diſcharge *Burchall* out of the cuſtody of the marſhal of the King's Bench at his ſuit. *Dav.* 17, 18.

In *October*, 1743, a commiſſion of bankrupt was taken out againſt Mr. *John Hudſon*, a ſcrivener in *Covent-Garden*, and the commiſſioners found him to be a bankrupt. *Dav.* 18.

194. By [*See paragraph* 35] ſtat. 7 *Ann. cap.* 12. ſect. 5. entitled, *An act for preſerving the privileges of embaſſadors*, it is enacted, That no merchant or trader whatſoever, within the deſcription of the ſtatutes againſt bankrupts, who ſhall put himſelf into the ſervice of an embaſſador, or public miniſter, ſhall have any privilege of the act for preſerving the privileges of embaſſadors.

195. By ſtat. 11 *Geo.* II. *cap.* 24. ſect. 1. it is enacted, That, after the 1ſt of *June*, 1738, any perſon may commence and proſecute, in *Great-Britain* or *Ireland*, any ſuit in any court of record, or

of equity, or of admiralty, and in all cauſes matrimonial and teſtamentary in any court having cognizance, againſt any peer of *Great-Britain*, or againſt any of the knights, citizens and burgeſſes of the Houſe of Commons of *Great-Britain*, or againſt their menial or other ſervants, or any other perſon entitled to the privilege of the parliament of *Great-Britain*, immediately after the diſſolution or prorogation of any parliament, until a new parliament ſhall meet, or the ſame be re-aſſembled, and immediately after any adjournment of both Houſes, for above fourteen days, until both Houſes ſhall reaſſemble.

196. "Becauſe," ſays Serjeant *Gooding*, "petitions for compoſition are mentioned in the ſtatutes, I ſhall here add ſome orders made in Chancery about the ſame, and publiſhed in open court, *October* 31, 1620." *See paragraph* 35.

That no compulſory order be granted to creditors to conform themſelves, and agree unto any rate or compoſition at the ſuit and petition of the debtor or inſolvent himſelf, but only at the ſuit of the creditors, in imitation and according to the equity of the ſtatute of bankrupts.

That where ſuch ſuits are exhibited in the behalf of the creditors, it be not enough that the creditors are named in the bill or petition; but that there ſhall be always affixed to the bill or petition the agreements of the creditors under the hands and marks of ſo many as have agreed, with a recital of the ſums and times of their particular debts.

That, to the end there may lie a ground of information unto the court, what the debts are in truth, which otherwiſe may be but in ſhew; there ſhall always be, before any order is granted, a reference to ſome of the maſters of the court, or other commiſſioners upon due examination, to certify the court what debts are in truth, and of what nature, and upon what ſecurity; before which maſters, or commiſſioners, ſhall alſo be heard the informations and allegations

legations of ſuch creditors as have not compounded.

That no releaſe be given upon any bill or ſuits, except the debts of the creditors that have agreed, amount at leaſt to full three parts in four, to be divided of the total of the debts; and not in theſe caſes neither, but ſparingly, by the direction of the court, upon hearing what may be alledged on both ſides.

That no proceedings at law, in caſe of any ſuch ſuits, be ſtayed againſt any ſureties of the inſolvent, nor againſt the lands or goods of the inſolvent himſelf, in caſe of recognizances or ſtatutes; but only againſt the perſon of the inſolvent. *Gooding*, 163, 164.

197. It was a ſaying of the lord chancellor *Elleſmere*, that againſt uſurers, bankrupts, perjured perſons, cozeners, *&c*, *Quælibet præſumptio creſcit in probationem*; and that one proof, with ſome preſumptions, is ſufficient to induce him to decree againſt ſuch. *Gooding*, 165.

198. *T.* a goldſmith, being inſolvent, agreed with moſt of his creditors to aſſign over all his eſtate upon oath, to ſeveral perſons in truſt for payment of his debts, as far as his eſtate would pay, he having ſuch allowance for himſelf and family, as was agreed upon. And moſt of the creditors ſigned the ſaid agreement; but ſome of them finding that *T* had done ſome act of violation of the ſaid agreement, took out a commiſſion of bankruptcy againſt the ſaid *T*. and ſeized all the eſtate they could come by, and pretended, that ſome of the ſaid creditors that ſigned the ſaid agreement, and that were not privy to the ſuing out the commiſſion, had notice in due time, though they had neglected the ſame, and that it was ſeven months from the date of the commiſſion before the commiſſioners aſſigned. Now *T*, and other perſons, that ſigned the firſt agreement, and were excluded by the commiſſioners from a dividend, being not compriſed therein,

therein, preferred their bill againſt the aſſignees of the commiſſioners, to have the agreement performed, or at leaſt to be admitted to an equal dividend with them. But the court would give no relief therein, and the rather, for that it was made appear, that *T.* had made a ſale of ſome of the goods he aſſigned in truſt for his creditors, but diſmiſſed the bill, *Good.* 166. cites 2 Chan. rep. 18. *Fuller et al.* v. *Lane et al.*

199. [*See paragraph* 35] *Duncomb*, an aſſignee under a commiſſion of bankruptcy, taken out againſt one *Staley*, a goldſmith, brought an action upon an undertaking, againſt *David Walter*, to which *Walter* pleaded, that he made no ſuch undertaking. And on a ſpecial verdict being found, the caſe was thus.

Staley owed *Walter* one thouſand and ninety pounds by judgment, and ſeveral other ſums to other perſons; and particularly to *Elizabeth Clarke* one hundred pounds. *Elizabeth Clarke*, on the 5th of *July*, 1677, makes her will, and *Joſeph Crew* her executor, and dies. *Joſeph Crew*, on the 6th of *November*, 1678, (before he had proved the will) ſued out a writ againſt *Staley*, called a bill of *Middleſex*: and he arreſts *Staley* for the money, who puts in bail. On the 18th of *November*, 1678, *Staley* paid *Walter* the thouſand pounds, and after ſurrenders himſelf in diſcharge of his bail to *Crew*'s action, and lies in priſon, from the time of the action, two years.

On the 18th of *November*, 1678, (When *Staley* paid *Walter* the thouſand pounds) *Crew* proves the will of *Elizabeth Clarke*; and on the 20th of *February*, 1678, a commiſſion iſſues againſt *Staley*, and on the 14th of *May*, 1679, the commiſſioners aſſign this thouſand pounds, and *Staley*'s eſtate to *Duncomb*.

And the queſtion being, whether *Staley* ſhould be accounted a bankrupt from the 6th of *November*, 1678, being the time of his arreſt, or only from the time he rendered himſelf in diſcharge of his bail.

Theſe

Theſe principal points were adjudged by the court,

Firſt, that the arreſt of *Staley* by *Joſeph Crew*, who was the executor, on the 6th of *November*, 1678, before probate of the will, which was not till the 18th of *November*, was not good, as againſt *Walter*, who was a fair creditor, and a ſtranger; and that therefore the payment as to *Walter* was good, and an arreſt cannot make a man a bankrupt, it not being an offence to be in debt.

Secondly. It was admitted, that, as between *Crew* the executor, and *Staley* the bankrupt, the arreſt before the probate was made good by the probate afterwards, according to 1 *Roll.* title executor, fo. 917. An executor ſues out a writ, and arreſts a man before probate, and after proves the will; as between thoſe two parties all is made good. But in the caſe at the bar, it ſhall not prejudice *Walter*, the third perſon, becauſe a man cannot be a bankrupt before a real debt is due; and as *Crew* had not proved the will, ſo he could not claim the debt of the teſtator at the time of the arreſt.

Thirdly. It was the judgment of the court, that *Staley* ſhould only be accounted a bankrupt *from the time of rendering himſelf in diſcharge of his bail to priſon.* For that the beſt man upon the Exchange may be arreſted, and put in bail, and afterwards become poor, and ſo be forced to ſurrender himſelf in diſcharge of his bail, and to ſave them; and it would be hard to conſtrue him a bankrupt from the firſt arreſt, when he was able. And it was adjudged, it muſt be an immediate lying in priſon from the arreſt, and not where bail is put in.

This caſe was firſt determined in the common pleas in *Hillary* term 32 and 33 *Car.* II. and is reported in *Levinz* and *Raymond*'s reports; and upon a writ of error being brought in the court of King's Bench to reverſe the judgment in the Common Pleas, on the 34 and 35 *Car.* II. upon a ſolemn argument

before the juſtices of the King's Bench, the judgment of the court of Common Pleas was affirmed. Reported in 2 *Raymond*, 479, and in *Shower*'s and *Ventris*'s reports. 3 *Lev.* 57. 1 *Vent.* 370. *Hill.* 32 and 33 *Car.* II. *Duncomb* againſt *Walter.*

200. Lord Chief Juſtice *Holt*, in a caſe between *Hopkins* and *Gery*, declared, that if a banker, or goldſmith, who has many people's money, will refuſe payment, yet keep his ſhop open, and, as often as he is arreſted, gives bail, he may by that means give preference of payment to his friends; and when he has ſo done, he runs away: yet ſuch payment ſhall ſtand good againſt a commiſſion of bankruptcy. And *Sheppard* the banker did the ſame, who was arreſted almoſt every hour in the day, for ſeveral days before he went off, and gave bail as often, and paid his friends, and then went and ſurrendered himſelf in diſcharge of his bail. 7 Mod. *Hopkins* and *Gery.*

201. *Came* brought an action againſt *Coleman*, for money had and received to his uſe, and on a ſpecial verdict it was found, that *H.* being a ſilkman, owed *B.* one hundred pounds, and *C.* fifty pounds. *B.* arreſts him for the hundred pounds in the ſheriff's court, and had bail; and afterwards *H.* pays off *C.* and then renders himſelf in diſcharge of his bail in *B*'s action.

The queſtion was, whether he was a bankrupt from the time of the arreſt, according to the ſtatute of the 21 *Jac.* 1. *cap.* 19. *Sect.* 2. (*See paragraph* 35) and the court was of opinion, that it muſt be taken from the time of the firſt arreſt, upon which he lies in priſon, and not where he puts in ſufficient bail; for that would be infinitely prejudicial and miſchievous, and no man would ever ſafely pay or receive from a tradeſman. Adjudged in the King's Bench, and affirmed in the Exchequer chamber. 1 *Salk.* 109. *Mich.* 1 *Jac.* II. *Came* and *Coleman.*

202. An action was brought upon an undertaking for twenty pounds; and upon pleading, that they made no ſuch undertaking, a ſpecial verdict

dict was found before the lord chief juſtice at *Guild-hall*,

That *Benjamin Hinton* was a goldſmith, and a trader in *London*, for divers years before the 10th of *January*, 24 *Car.* II. and had contracted debts to the amount of fifty thouſand pounds.

That he was indebted to one *Capel* on bond in four hundred pounds.

That a writ, iſſued againſt him, teſted the 12th of *February*, 35 *Car.* II. returnable *fifteen days after Eaſter*; and before the return he was arreſted thereon, and put in ſpecial bail.

That on the 26th of *February* he was again arreſted.

That Sir *John Moore* became bail for him, and gave a general ſecurity for him in all actions.

That thoſe debts were not paid in *ſix months*.

That on the 30th of *March Hinton* paid the defendant *Shiſh* twenty pounds.

And they found the ſtatute of 21 *Jac.* I. *cap.* 19. and the commiſſioners aſſignment to the plaintiff; and the queſtion was,

Whether *Benjamin Hinton* the banker was a bankrupt at the time of *Shiſh*'s receiving the twenty pounds, being the 30th of *March*, 35 *Car.* II. Becauſe if it was ſo, then the bankrupt had no capacity of paying this money to the defendant, after an act of bankruptcy committed; nor had he any power to diſpoſe of his eſtate, it being all *in cuſtodia legis* for the benefit of all his creditors equally; and if ſo, it was well aſſigned to the aſſignees, and then there can be no queſtion, ſince the caſe of *Smith* and *Mills*, 2 Rep. 26.

It was inſiſted in this caſe, by Sir *Bartholomew Shower*, amongſt various arguments, that if a man be arreſted for a juſt debt of an hundred pounds, and ſhall not pay or compound for the ſame in ſix months, he ſhall be a bankrupt from the firſt arreſt.

The law of *ſuum cuique tribuere* ought to be purſued on the behalf of the creditors; and that the acts relating

lating to bankrupts ought to be conſtrued equitably and favourably on the behalf of the creditors ; and then he ſuppoſed what objections might be made to his arguments, *viz.* the inconvenience of ſuch conſtruction was allowed would be great ; becauſe, if a trading perſon be arreſted and bailed, and a third perſon, knowing nothing of it, intruſts him, or deals with him ; if ſuch perſon ſhould be a bankrupt from the firſt arreſt, then every perſon ſo dealing with him would be forced to return the goods, and yet loſe the money he paid for them ; which they ſay would be ſo great a miſchief, that it would diſcourage trade. But his anſwer to it was this : The ſame may happen every day in many caſes, where I buy goods of a man that hath no property ; for by 1 *Jac.* I. *cap.* 15. (*See paragraph* 30) being within the equity of that proviſo.

That no debtor of the bankrupt be endangered for the payment of his debt truly and bona fide, *to any ſuch bankrupt, before ſuch time as he ſhall know that he is become a bankrupt.* That is, all perſons paying money to, or buying goods of, a bankrupt, being to be received within the equity of that proviſo, if they know him not to be ſuch.

The ſame as to lands bought of a trader, *caveat emptor*, or the buyer muſt take care of his title.

The ſame as to purchaſing of the king's accomptant, and paying rent to a feme covert. *Dutton* and *Tracy*'s caſe. 2 *Croke.*

And then he cited ſeveral acts, which he ſaid were acts of bankruptcy. *viz.*

A man may keep his ſhop, and walk the Exchange, and yet may conceal himſelf to avoid a particular ſum being paid. His ſervants may deny him at home, and ſay he is gone into the country ; but this muſt be by his expreſs order. He may make a fraudulent conveyance of his eſtate to defraud his creditors ; and this will make him a bankrupt, though he may poſſibly trade with credit for ſome months, till his eſtate be diſcovered.

In

In *Heylor* and *Hall*'s caſe, *Palmer*, 325. (*See paragraph* 149.) it is reſolved, that if a trader in debt conceals himſelf in his houſe for a day, or an hour, to delay or defraud his creditors, this makes him a bankrupt; and yet his other correſpondents may not know of it. And that in law, as well as philoſophy, *de non entibus et non apparentibus eadem eſt ratio.*

But Mr. *Thompſon* argued on the other ſide, and cited *Staley*'s caſe in the cauſe of *Duncomb* againſt *Walter* (*See paragraph* 199.) and the inconveniencies which would ariſe if theſe arguments were allowed.

And the Lord Chief Juſtice *Wright* and the reſt delivered their opinions for the defendant, *viz.* that on putting in bail, he was not bankrupt from the arreſt, but only from the ſurrender in diſcharge of his bail. *Show*, 512. *Eaſt.* 3 *Jac.* II. *Hill* and others againſt *Shiſh.* *Hinton* the banker's caſe.

203. In trover and converſion a ſpecial verdict was found, that a merchant had made a fraudulent deed to the defendant of the goods contained in the declaration; and that afterwards he went to the Exchange, and appeared publicly in trade, and then abſconded; and afterwards a commiſſion being taken out, theſe goods were aſſigned by the commiſſioners. The executing of the deed does not make him a bankrupt, becauſe the jury find, that he was afterwards abroad, and that then he abſconded, and that the commiſſioners pitched upon that act of bankruptcy to declare him a bankrupt; and though they have found it a fraudulent deed, yet they did not find it in *fraudem creditorum*, and it might be only a fraudulent deed in reſpect of ſome ſubſequent valuable ſale; and therefore no title was found for the plaintiff. *Hutton*, 42, 43. *Cartwright* and *Underhill.*

204. *T. S.* having married his daughter to one *Bennet*, a tradeſman in *London*, who was extravagant and in debt; the father makes his will, and deviſes the premiſſes in queſtion (being lands in fee) to his daughter, the wife of *Bennet*, for her ſeparate uſe, excluſive

excluſive of her huſband, to hold to her and her heirs; and that her huſband ſhould not be tenant by the courteſy, nor have theſe lands for his life, in caſe he ſurvived his wife, but that they ſhould, upon the wife's death, go to her heirs.

Soon after this, the teſtator dies, and *Bennett*, the husband, becoming a bankrupt, the commiſſioners aſſign the lands to the defendant *Davis*, in truſt for the creditors; and, upon *Davis*'s bringing his ejectment, the bankrupt's wife, by her next friend, prefers her bill againſt *Davis*, the aſſignee of her husband, to compel them to aſſign over the eſtate to her ſeparate uſe.

It was objected, on behalf of the defendant and aſſignee, that he, being creditor, and having the law on his ſide, it would be hard to take the benefit of the law from him; and that, though the teſtator might intend thoſe lands for the ſeparate uſe of the daughter, yet that this intention was not executed according to law, as by the law the husband, during the coverture, was entitled to the wife's eſtate, in her right: and, though the teſtator might have deviſed the premiſes to truſtees, for the ſeparate uſe of the wife; yet the queſtion was not upon what he might have done, but upon what in fact he had done: and I mentioned the caſe of *Harvey*, and *Harvey* (1 P. *Will.* 125) where a man had deviſed goods of value to his daughter, a feme covert, for her ſeparate uſe; and it not being to truſtees, lord *Cowper* apprehended it to be a caſe of difficulty; but declared that the intention of the teſtator was againſt the rule of law, and void: and I urged, that the caſe of a deviſe of a legacy, or of a term to the wife, for her ſeparate uſe, might be good; becauſe theſe remained in the executor until aſſent; and equity would not compel the executor to aſſent, whereby the intention of the teſtator ſhould be diſappointed, but would continue the executor a truſtee for the feme covert: whereas, in the preſent caſe, the deviſe being of lands in fee to the wife,

wife, who, by the will only, had an immediate title thereto; the husband muſt conſequently be intitled to the profits in her right; and it would be repugnant to the law to ſay he ſhould not take the profits.

That here was no truſts, the teſtator never having intended to truſt the husband, and the wife could not be a truſtee for herſelf; beſides, the husband could not be a truſtee for the wife, they both being but one perſon.

That all this ſtrained conſtruction was to do that which was againſt common right; *viz.* to create a ſeparate property in a feme covert. And I put this caſe:

Suppoſe I ſhould have a rent-charge in fee, and my ſon had the land, ſubject to the rent-charge, which ſhould amount to near the value of the land; after which I ſhould deviſe the rent-charge to my ſon (who had the land) and ſay by my will that the rent ſhould not be ſubject to the debts of my ſon. In this caſe, the rent would be ſubject to his debts, in regard it would be merged; and yet this rent might have been given to truſtees.

On the other hand, the plaintiff's council would have read parol evidence, to prove that the teſtator did not intend theſe lands ſhould be liable to the huſband's debts.

But the court would not permit ſuch evidence to be read; it being in the caſe of a deviſe of land, which by the ſtatute muſt be all of it in writing.

As to the chief point, the maſter of the rolls took it to be a clear caſe, that it was a truſt in the huſband; and that there was no difference, where the truſt was created, by the act of the party, and where by the act of law.

If I ſhould deviſe, that my lands ſhould be charged with debts, or legacies, my heir taking ſuch lands by deſcent, would be but a truſtee, and no remedy for theſe debts or legacies but in equity; ſo in the principal caſe, there being an apparent intention,

that

that the wife ſhould enjoy theſe lands to her ſeparate uſe; by that means the husband, who would otherwiſe be entitled to take the profits in his right, during the coveture, is now declared and made a truſtee for his wife: and, admitting the husband to be a truſtee, then the argument of the creditors having the law on their ſide, was immaterial: as, if the bankrupt had been a truſtee for *J. S.* his bankruptcy ſhould not in equity affect the truſt eſtate: and that, though the husband, the bankrupt, might be tenant by the courteſy, yet he ſhould be but a truſtee for the heirs of the wife. Alſo, when the teſtator had a power to deviſe the premiſes to truſtees for the ſeparate uſe of the wife, this court, in compliance with his declared intention, will ſupply the want of them, and make the husband truſtee; and the defendant, the aſſignee, who claiming, under the husband, can have no better right than the husband, muſt join in a conveyonce for the ſeparate uſe of the wife: which was decreed accordingly. 2 P. *Will.* 316. *Mich.* 1725, at the Rolls. *Bennett*, v. *Davis.*

205. The defendant's teſtator, by will, deviſed eight hundred pounds to be paid within ſix months after his death, to one Mr. *Deſine*, in truſt that he ſhould lay it out and inveſt it in a purchaſe for the benefit of the wife of *J. S.* and to ſettle it ſo as, after the death of the wife, it might come to her children; and the intereſt in the mean time to be paid to ſuch perſon as ought to receive the profits. *J. S.* becomes a bankrupt, and the plaintiff, as aſſignee under the ſtatute of bankrupts, would have the intereſt of this money decreed to him during the joint lives of baron and feme.

Per curiam: This not being any truſt created by the husband, nor any thing out of his eſtate, but given by a relation of the wife's, and intended for her maintainance, it is not liable to the creditors of the husband, and the plaintiff hath no title thereunto, as aſſignee of the commiſſion of bankrupts; and

and therefore it is decreed, it ſhould be paid to *deſine* the truſtee, to be laid out in land, and ſettled according to the will: the caſe of *Drake* and the *mayor of Exeter* was cited, where there was a leaſe for twenty-one years, with a covenant for the renewal at the end of the term; the leſſee became a bankrupt, adjudged the aſſignee under the ſtatute ſhould have no benefit of that covenant. 2 *Vern.* 96. *Vandenanker*, v. *Deſbrough*.

206. *Walter Wallinger*, by his will, left to his niece *Elizabeth Tayleur*, an infant, one thouſand pounds, payable after the death of the teſtator's wife, and at his ſaid niece's age of twenty-one years, if ſhe ſhould ſo long ſurvive.

The niece married *J. S.* without the knowledge or conſent of her father. *J. S.* being, at that time, much in debt, by judgment, and otherwiſe; and having gained the young gentlewoman's conſent, by bribing the maid-ſervant. The niece was about eighteen years of age.

Soon after the marriage he became a bankrupt, and the commiſſioners of bankruptcy aſſigned over all the eſtate and effects of the bankrupt to the plaintiffs, in truſt for the creditors, who brought their bill for this legacy. The teſtator's widow being dead, and the niece being about twenty years old, and conſequently the legacy due; and the bankrupt had two children by his wife then living.

This cauſe coming on before Baron *Price*, in the abſence of the lord-chancellor, the baron, in regard to creditors, did decree the legacy and intereſt to be paid to the plaintiffs.

But, upon an appeal from that decree to the lord-chancellor, his lordſhip declared, that, for as much as the plaintiffs, the aſſignees in the commiſſion, claimed under the bankrupt, they ought not to be in a better caſe than the bankrupt himſelf; and ſince, if he had brought a bill for his legacy, the court would not have allowed it him, without obliging him, at the ſame time, to make ſome pro-

viſion

proviſion for the wife and children; ſo, for the ſome reaſon, when theſe, claiming under the bankrupt, and who muſt be exactly in the ſame caſe as he himſelf would have been in, came for equity, they ought to do equity, which would be to provide for the wife and children of the bankrupt, from whom they derived their claim.

But with regard to the intereſt of the money, as the bankrupt commonly was allowed to receive that, ſo the aſſignees ought to receive the ſame during the bankrupt's life; alſo, if the bankrupt's wife ſhould die without iſſue, then the bankrupt would have been allowed to receive the whole money; and therefore, in ſuch caſe, the aſſignees ſhould be allowed to receive it alſo.

As to the objection, that the aſſignment was made by the commiſſioners before any right to the legacy veſted in the wife; *viz.* before ſhe was twenty; ſo that, at that time, the legacy was not veſted, and, by poſſibility, might never veſt, foraſmuch as ſhe might have died before twenty.

Lord chancellor ſaid, that was not ſo much to be regarded, becauſe the commiſſioners might ſupply it by making a new aſſignment; though, it was true, ſuch new aſſignment would not help their bill, ſo as to entitle the plaintiffs to any decree thereon.

That he took it for granted there were no precedents in this caſe, there being none cited on either ſide; and therefore the court was at liberty to judge upon the reaſon of the thing. But, however, a judge having given a contrary opinion, he would take time to conſider of it.

And, on the cauſe's coming on again, Mr. *Vernon*, for the defendant, cited the caſe of *Taylor* and *Wheeler*, where *A.* mortgaged a copyhold for a conſiderable ſum of money; but the conveyance was defective for want of a ſurrender being preſented in time. After which, *A.* became a bankrupt; and the court helped the mortgagee of the copyhold, againſt

againſt the aſſignees, under the commiſſion; which he urged to be an argument that the creditors, or aſſignees of the commiſſioners are not to be regarded as purchaſers.

It was, moreover, obſerved to the court, that the bankrupt had, in this caſe, gained his certificate, and was diſcharged; and, that the aſſignment made to the complainants, being before the legacy was veſted, if they could not now ſupply the aſſignment, by making a new one, the conſequence was, that the legacy was veſted in the bankrupt.

But the lord-chancellor replied, that this not appearing in the pleadings, he would take no notice of it.

Nevertheleſs, at another day, the fact being made to appear by a petition, with the certificate of the commiſſioners, and the allowance of the lord-chancellor *Harcourt* annexed, the court ſaid, It was clear the commiſſioners could not aſſign this poſſibility of right, which the bankrupt had to the portion; and, conſequently, the aſſignees being plaintiffs in the bill, and entitling themſelves under this aſſignment, and this aſſignment being void with reſpect to ſuch poſſibility *; therefore the bill muſt be diſmiſſed; but without coſts, becauſe the plaintiffs were creditors.

* But the reaſon given above, *viz. becauſe the bankrupt, the huſband, could not have come at his wife's portion without the aſſiſtance of a court of equity*, which would not have decreed it to him, but on his making ſome proviſion for his wife, ſeems to have been the beſt foundation for this decree, ſince a poſſibility, or contingent intereſt, is certainly aſſignable by the commiſſioners. Thus, in the caſe of *Higden* and *Williamſon*, firſt heard at the Rolls, *Michaelmas*, 1731, and afterwards affirmed by lord-chancellor *King*, in *Michaelmas*, 1732. The caſe, in effect, was, an eſtate was deviſed to be ſold, and the monies ariſing from ſuch ſale to be divided among ſuch of the children of *A.* as ſhould be living at his death. *A.* had ſeveral children; one of whom, *viz. B.* became a bankrupt, and the commiſſioners aſſigned over his eſtate; after which *B.* got his certificate allowed; and then *A* died.

Afterwards, in *Trinity* term, 1718, the wife of *J. S.* by her next friend, having brought a bill, ſetting forth her being ſeduced into this marriage, and the husband's bankruptcy, together with the certificate for his diſcharge, prayed that the money might be put out for her ſeparate uſe for life, and afterwards for her children. To which the husband putting in his anſwer, and declaring himſelf ſenſible of his having injured his wife, in manner as above, ſubmitted to what was decreed by the bill; only he prayed the arrears of intereſt.

On the other hand, the aſſignees oppoſed the bill, inſiſting that the commiſſioners might ſtill make a new aſſignment of this, which was now, and not before, veſted.

But by lord chancellor *Parker*, the commiſſioners have executed their power; and the debts which the husband, the bankrupt, owed to the creditors before the bankruptcy, are now extinct by act of parliament; and this portion is as a new acquired eſtate by the husband in right of his wife.

Wherefore, ſince the husband agreed to this prayer of the wife's bill, (which is but a reaſonable reparation for the wrong he has done her) Decree the husband the arrears of intereſt, deducting the coſts, and let the legacy be laid out in a purchaſe; and, in the mean time, let the wife have the intereſt for her ſeparate uſe, *&c.* By which means the whole legacy was ſaved to the wife and to her ſeparate uſe. 1 *P. Will.* 382. *Jacobſon and others*, v. *Williams.*

Decreed, that his ſhare of this money, which, on *A*'s death belonged to *B*, ſhould be paid to the commiſſioners; for that not only the later ſtatutes relating to bankrupts, mention the word *poſſibility*; but alſo, becauſe the 13 *Eliz. cap.* 7, ſect. 2, empowers the commiſſioners to aſſign all that the bankrupt might depart with. And here *B*, in the life-time of *A*, might have releaſed this contingent intereſt. Beſides, the 21 *Jac.* 1, *cap.* 19, enacts, that the ſtatutes relating to bankrupts, ſhall be conſtrued in the moſt beneficial manner for creditors.

207. Theſe three caſes were reſerved for the opinion of the lord chancellor. The caſes were, an husband, trader, in conſideration of a marriage and of a portion, gave a bond to his wife's truſtees, to leave the wife, if ſhe ſurvived him, one thouſand pounds. The obligor became a bankrupt; and it was objected, that, in lord *Cowper*'s time, it had been ordered, in caſe of a bond given on ſo valuable a conſideration, the money computed upon the diſtribution to be the ſhare of the obligee in this bond, ſhould be put out at intereſt, and the creditors have ſuch intereſt during the life of the husband, the bankrupt; and, if the husband ſhould die, leaving the wife, the money to be paid to the wife; but if the wife ſhould die in the life-time of her husband, then the money to be paid to the creditors. *See this caſe in the next ſect. or parag.*

On the other hand, the lord *Macclesfield* was ſaid to have doubted of this; wherefore theſe caſes coming now in queſtion before the preſent chancellor, his lordſhip ordered the precedents made in lord *Cowper*'s time to be left with him; and one or two were left with him.

But his lordſhip was of another opinion, conceiving that no part of the bankrupt's eſtate ſhould wait or be deferred from being diſtributed; the act ordering that the bankrupt's eſtate ſhould be diſtributed within -- --months: eſpecially, that the diſtributions ſhould not wait, as in the preſent caſe, for a debt which was neither *debitum in preſenti*, and never might be *debitum in futuro*; in regard the wife might die in the life-time of the husband: beſides, the husband, after his certificate allowed, might go to his trade again, and become a ſolvent perſon, able to pay off his bond. The court reſolved, That the contingent creditor ſhould not come in for a diſtribution; neither ſhould the money be reſerved in favour of ſuch contingency.

But his lordſhip declared, that, though the debt was contingent when the obligor became a bankrupt, yet, if the contingency happened before the diſtribution made, then ſuch contingent creditor ſhould come in for his debt: ſo, if ſuch contingency happened before the ſecond dividend made, the creditor ſhould come in for his proportion thereof, tho' after the firſt dividend.

Secondly, one of thoſe caſes was on a bottomry-bond, and the obligor thereof became a bankrupt before the return of the ſhip, and the ſhip did not return before the diſtribution made; whereupon it was held that ſuch obligee ſhould have no benefit on the diſtribution upon the commiſſion. And,

Whereas it was objected, that this bond would be barred after the bankrupt's certificate allowed; which would not be, unleſs it were then done.

Per curiam: This cannot be, if the obligor is careful in declaring upon his bond. Indeed, if the party declares upon the bond only, he ſhall be barred; otherwiſe, if he ſets forth as well the condition as the bond, in the declaration; for then it muſt appear that the cauſe of action did not accrue at the time of the obligor's becoming a bankrupt. 2 *P. Will.* 479. *Mich.* 1728. *ex parte Caſwel, ex parte Cazalet, ex parte Bateman.*

208. One *Blanchard*, a cabinet-maker, married the ſiſter of *Calliford*, who had five hundred pounds portion ſecured by land. *Blanchard*, on his marriage, gives a bond to leave his intended wife, if ſhe ſurvived him, five hundred pounds, or a third of his eſtate, at her election.

Blanchard became a bankrupt; bill by the aſſignees to have the five hundred pounds raiſed by a ſale; and decreed accordingly: but with this, that the wife ſhould come in as a creditor upon the five hundred pound bond; and what ſhould be paid in reſpect thereof, to be put out at intereſt, and received by the creditors during the life of the huſband;

band; and, if the wife ſurvived, then the money to be paid her. 2 *Vern.* 662. *Holland* v. *Calliford.*

209. The plaintiff brought an action of debt againſt the defendant for eight hundred pounds, wherein the plaintiff declared, that *William Donaldſon* in his life time, *viz.* the 6th of *May*, 1704, by his bond then dated, obliged himſelf, his heirs, executors, and adminiſtrators, to the plaintiff *Tully*, and one *Philip Rudſby*, whom the plaintiff ſurvived, in the ſaid ſum of eight hundred pounds; *&c.* with condition under the ſaid bond ſubſcribed, that if the heirs, executors, or adminiſtrators of the ſaid *William* ſhould pay to the ſaid plaintiffs *Tully* and *Philip*, or the ſurvivor of them, or the executors or adminiſtrators of the ſurvivor of them, four hundred pounds, within two months after the death of the ſaid *William*, in caſe one *Martha Latimer* ſhould marry the ſaid *William*, and ſhould happen to ſurvive him; in truſt for the benefit and behoof of the ſaid *Martha*, her executors, adminiſtrators, or aſſignees; then the obligation ſhould be void, or otherwiſe ſhould remain in full force; and the plaintiff in fact ſays, that after making the ſaid bond, (that is to ſay, the 18th of *May* in the ſame year, 1704, the ſaid *Martha* married the ſaid *William Donaldſon*; and that after the ſaid marriage, *viz.* the 17th of *May*, 1727, the ſaid *Philip Rudſby*, died, and the plaintiff ſurvived him; and that the ſaid *William*, the ſame day and year, made his will, and the defendants his executors; and afterwards, *viz.* the 3d day of *January* in the ſame year, the ſaid will not being revoked, died; and the ſaid *Martha* ſurvived him, and is yet alive; and that after the death of the ſaid *William Donaldſon*, *viz.* the 10th of *April*, 1728, the defendant *Frances* proved the ſaid will in due form of law; that the ſaid *Frances* and *Chriſtopher*, or either of them, did not pay the plaintiff the ſaid four hundred pounds within two months after the death of the ſaid *William*, according to the ſaid condition, whereby the bond became forfeited;

and the action arose to the plaintiff to demand of the said defendant the said eight hundred pounds; but the defendants, the said eight hundred pounds, tho' often requested, have not yet paid, nor have either of them paid it, *&c.*

The defendants, after praying oyer of the bond and condition (which was granted) plead in bar, that the said *William Donaldson* being a subject born of this kingdom, after the making of the bond, *viz.* the 8th of *January*, 1720, and for seven years before that time, and more, and afterwards, exercised the trade of a bisket-maker, and got his living in that trade; and that he so using that trade, the 8th of *January*, became indebted to *R. H. G. S. J. C.* and divers other persons, in the sum of two hundred pounds and more; and being so indebted, and after the 20th of *May*, 1716, *viz.* the 9th of *January*, 1720, the said debts not being paid, became a bankrupt, *&c.* and the said *William* so being a bankrupt, the 8th of *February* following, a commission of bankruptcy, under the great seal, in due form of law, issued against him, directed to, *&c.* as by the said commission appears; by virtue whereof, afterwards, *viz.* the 1st of *March*, in the said year, the commissioners declared him a bankrupt, *&c.* and that he surrendered himself, and conformed, as by the statute of 5 *Geo.* I. *cap.* 24. intitled, *An act for preventing frauds committed by bankrupts*, is provided; that the commissioners the 16th of *March* following, certified to the lord chancellor, under their hands and seals, *&c.* that four fifths of his creditors in number and value, who had duly proved their debts, signed the certificate, and certified their consent to allow the said certificate, and to discharge the said bankrupt; that the 10th of *April*, 1721, three of the said commissioners, under their hands and seals, certified the lord chancellor such signing and consent of the said creditors; that the 7th of *July*, 1721, the certificate was confirmed, and entered on the bankrupt's petition, the bankrupt having first sworn, that the certificate, and the consent of his creditors thereto,

to, were obtained juſtly, and without fraud, as by the certificate produced in court, and by the records of the ſaid court fully appears; to which plea the plaintiff demurred, and the defendant joined in demurrer.

This caſe was argued in *Trinity* term, 1728, by Mr. *Strange* for the plaintiff, and by Mr. *Joceline* for the defendant; and the firſt exception to the plea was, becauſe it did not ſhew who were the petitioning creditors, nor in what ſums they were creditors. Now, by the act 5 *Geo.* I. *cap.* 24. no commiſſion is to iſſue on the petition of one creditor, unleſs the debt is one hundred pounds; nor upon the petition of two creditors, unleſs the debt is one hundred and fifty pounds; nor on the petition of three or more, unleſs their debt be two hundred pounds; and therefore that is a matter neceſſary to be averred; for it is traverſable; for if the creditors that petitioned for the commiſſion are not creditors to ſuch a value, the iſſuing the commiſſion will be void.

On the other ſide, it was argued for the defendant, that it was alledged in the plea, that the commiſſion iſſued in due form of law, which was ſufficient, for it has been adjudged in *Lutw.* 274. *Lawſon* verſus *Lamb*, that in an action brought by aſſignees of commiſſioners of bankrupts, they need not ſet out the proceedings of the commiſſion and commiſſioners at large. And in *Lutw.* 451. *Slaughter* verſus *Pierpoint*, it was held, that it need not appear in a plea of aſſignment by commiſſioners of bankrupt, that the bankrupt was indebted in one hundred pounds.

But the court held the plea naught for this exception; for as to the caſe in *Lutw.* 274. that was in caſe of an action brought by the aſſignees, wherein a ſhort way of declaring hath been allowed upon the authority of a great number of precedents. And as to the other caſe in *Lutw.* 451. of a plea that was long before the ſtatute of 5 *Geo.* I. *cap.* 24. *ſect.* 20. which is expreſs, that no commiſſion ſhall iſſue, unleſs the creditors, who petition for a commiſſion, are cre-

ditors for ſuch ſums as are mentioned for that purpoſe in that act; but in this plea, it is ſo far from mentioning in what ſums the creditors were creditors, that it does not mention there was any petition at all; but by the 13 *Eliz. cap.* 7. *par.* 2. the chancellor is impowered to iſſue a commiſſion only upon complaint made to him in writing.

But it was further inſiſted upon by the counſel for the plaintiff, that this bond was not diſcharged by the act of bankruptcy and certificate, within the intention of the acts. Nor is the defendant aided by the act of 7 *Geo.* I. *cap.* 31. for explaining and making more effectual the ſeveral acts concerning bankrupts; for the four hundred pounds, in the condition, was payable at a day *after* the bankruptcy committed, *viz.* within two months after the death of *William Donaldſon* the bankrupt, and upon two contingencies, *viz.* if *Martha Latimer* married him, and ſurvived him. And a caſe was cited between *Godling* and *Godling*, Paſch. 11 *Ann.* where in an action of debt upon a bond dated before the act of bankruptcy committed by the defendant, it appeared, the money in the condition was not payable till after the act of bankruptcy. The defendant inſiſted he ought to be diſcharged upon common bail, by virtue of the ſtatutes about bankrupts; but it was ruled, that he ſhould be held to ſpecial bail; and the plaintiffs could not come to prove this debt, within 7 *Geo.* I. *cap.* 31. becauſe it depends upon two contingencies.

On the other ſide, it was inſiſted on for the defendants, that this was *debitum in præſenti*, though it was *ſolvendum in futuro*. *Cro. Jac. Neal* verſus *Sheffield*, 254. and therefore would be barred by the act of bankruptcy and certificate, *&c.*

But all the judges were of opinion, that a creditor upon a bond, with condition to pay money at a future day, ſubſequent to the act of bankruptcy, before 7 *Geo.* I. *cap.* 31. could not be admitted to prove ſuch debt, or to have any dividend, before ſuch ſecurity became payable. And that act recites it to have been

been a queſtion, for remedy whereof this act was made; and it would be hard upon the former acts to put ſuch a conſtruction as to bar a man of his debt, when he could not come into the commiſſion, and have the benefit of it. Then as to the ſtatute 7 *Geo.* I. *cap.* 31. that enacts, *that any perſon who hath given, or ſhall thereafter give credit on ſuch ſecurity*, as aforeſaid, [referring to the ſecurities mentioned in the recital] *to any perſon who was or ſhould become a bankrupt*, upon a good and valuable conſideration, *bona fide*, for any ſum of money, or any other matter or thing whatſoever, which ſhould not be due or payable at or before the time of ſuch perſons becoming bankrupts, ſhall be admitted to prove his bond, *&c.* for the ſame, in ſuch manner, as if it was payable preſently, and not at a future day, and ſhall receive a proportionable dividend, *&c.* of ſuch bankrupt's eſtate, in proportion to the other creditors of ſuch bankrupt, deducting only thereout a rebate of intereſt, and diſcounting ſuch ſecurities payable at future times, after the rate of 5 *per cent. per ann.* for what he ſhall receive, to be computed from the actual payment thereof, to the time ſuch debt or ſum of money ſhould or would become payable in and by ſuch ſecurities as aforeſaid. Then follows a clauſe, that the bankrupt ſhould be diſcharged of ſuch ſecurities. Now it being uncertain whether this bond ſhould ever become due, or not, it depending upon two contingencies, which have not both happened at the time of committing the act of bankruptcy, it was impoſſible to make ſuch abatement at 5 *per cent.* as the act directs; and therefore this bond, the court held, was not within the act; and therefore they were of opinion to give judgment for the plaintiff.

But Mr. *Joceline* took an exception to the declaration, that it was not averred, that the four hundred pounds was not paid by the heirs of *William Donaldſon*, nor that the four hundred pounds was ſtill due; but only that the defendant had not paid it, which was a fatal fault; and the court being of that opinion

nion, Mr. *Strange* moved, *July* the 10th, in *Trinity* term, 1728, for leave to diſcontinue upon payment of coſts, which was granted.

Afterwards the plaintiff brought a new action on the ſame bond, againſt the defendants, but amended the fault in the former declaration, by averring, that the heir of *Donaldſon* had not paid the four hundred pounds, nor any body elſe. And the defendant amended his plea in ſeveral things, to which there was a demurrer by the plaintiff, and a joinder in demurrer, which record is entered *Mich.* 2 *Geo.* II. *B. R. &c.* And the cauſe coming on in the paper, *November* 26. This *Michaelmas* term, judgment was given by the whole court, upon the merits, that the plaintiff's debt was not barred by the matter compriſed in the plea, becauſe it was not within 7 *Geo.* I. *cap.* 31, for the reaſons mentioned before. 2 *Lord Raym.* 1546. *Tully*, v. *Sparks* and *May*, executors of *Donaldſon.* 1 *Geo.* II.

210. *Anne King*, by her petition in *January*, 1742, ſet forth, that on the 16th of *February*, 1731, by articles tripartite, made before her marriage with *James King*, made between *James King* the elder, and the bankrupt, *James King* the younger of the firſt part; *James Sutton*, and the ſaid *Anne King*, by the name of *Anne Sutton*, his daughter, of the ſecond part; and *Robert Sutton* and *John Complin*, of the third part, reciting the intended marriage: It was, amongſt other things, covenanted and agreed, that the ſaid *James Sutton* ſhould, within three months after the marriage, pay the ſaid *James King* the younger one thouſand pounds, as her marriage portion; and if *James* and *Anne* ſhould have iſſue living at the death of *James Sutton*, that then the heirs, executors, or adminiſtrators of *James Sutton* would pay to the ſaid *James King* the younger the further ſum of one thouſand pounds, if he ſhould be then living; but if *King* ſhould die before the laſt thouſand pounds became payable to him, then the ſame ſhould, in like manner, be paid to the ſaid *Robert Sutton* and *John Complin*, *&c.* in truſt,

truſt, to place out the ſame at intereſt, on ſuch ſecurities as the truſtees, with the ſaid *Anne King*, ſhould approve of, and ſhould pay the intereſt to be made thereof to her, during her life; and after her deceaſe, for the maintenance and education of the children of the ſaid *James* and *Anne King*, till they ſhould attain twenty-one, and then to be paid to them, in ſuch parts and proportions as the ſaid *James* and *Anne King* ſhould appoint; and, in default of ſuch appointment, to be divided equally between them. And in caſe they had no iſſue, then to ſuch perſon or perſons as the ſaid *James King* the younger ſhould, by deed or will, give or appoint the ſame unto, and in default thereof, the ſame was to be paid to the executors or adminiſtrators of the ſaid *James King*.

And by the ſame articles, *James King* the younger covenanted, that if he received the ſaid thouſand pounds, payable after *James Sutton*'s death, according to ſuch covenant, that the heirs, executors, or adminiſtrators of the ſaid *James King* the younger would, within three months after his deceaſe, pay to the ſaid *Robert Complin* and *John Sutton*, *&c.* one thouſand pounds, to be by them employed, in ſuch manner and form, and for ſuch uſes, intents, and purpoſes, as were before expreſſed and limited, touching the thouſand pounds payable after the death of *James Sutton*.

The articles were executed by all parties, and the marriage ſoon after took effect.

In *January*, 1739, *James Sutton*, the father, died; and *James* and *Anne King* having iſſue a daughter, named *Anne*, who was then living, *James King* became intitled to the thouſand pounds after *James Sutton*'s death, and the executors of *Sutton* accordingly paid him the ſame, and he gave them a diſcharge for the ſame.

In *January*, 1741, *Robert Sutton*, one of the truſtees, died, and a commiſſion of bankruptcy iſſued againſt *James King*, and he was duly found a bank-

bankrupt; and his eſtate was aſſigned to *Edward Grace*, *Thomas Ganway*, and *Timothy Denham*.

That ſhe apprehended, that *John Complin*, the ſurviving truſtee, ought to be allowed the thouſand pounds ſo paid to her huſband *James King* by *Sutton*'s executors, in the nature of a debt under the commiſſion, by virtue of the covenant in the articles, and that a proportionable part of *King*'s eſtate, in proportion of what was to be paid to his other creditors, might be paid to the truſtees, to be diſpoſed in ſuch manner as might anſwer the intention of the ſaid articles.

That ſhe had applied to *Complin*, and had requeſted him to prove the ſaid debt of one thouſand pound before the commiſſioners, and to be admitted a creditor for the ſame; but that he pretended, tho' his name was mentioned as a truſtee in the articles, yet that he had never executed them, and refuſed to act in the truſt, whereby ſhe and her daughter were in danger of being totally deprived of the benefit of the thouſand pounds, intended as a proviſion for her by the ſaid articles.

She therefore prayed his lordſhip, that ſhe might be at liberty to name a new truſtee in *Complin*'s room; and that ſuch new truſtee might be admitted a creditor under the ſaid commiſſion for the ſaid thouſand pounds, and might be paid a dividend, in proportion with the reſt of *James King*'s creditors; and that the money to be received by ſuch new truſtee, by virtue of ſuch dividend, might be placed out at intereſt, in ſuch manner as that ſhe might receive the intereſt thereof during her life, in caſe ſhe ſurvived her huſband; and that the principal monies to be received for ſuch dividends might go and be paid to ſuch child or children of her by *James King*, as ſhould happen to be living at the death of the ſurvivor of them, in caſe there ſhould be any ſuch iſſue, and in ſuch manner as was directed by the articles; or that his lordſhip,

lordſhip ſhould make ſuch order as to him ſhould ſeem meet.

On the 21ſt of *January*, 1742, this petition came on to be heard before his lordſhip, and was learnedly argued by the counſel on both ſides; and the three preceding caſes, *viz. ex parte Cazalet*, *Holland* and *Calliford*, *Tully* and *Sparkes*, were cited; and on the firſt hearing, his lordſhip gave the gentlemen, who were counſel for the ſaid *Anne King*, further time to ſpeak to it, and in the mean time to ſearch for precedents; and upon this petition's coming on again before his lordſhip, and no other precedents to the point appearing, his lordſhip was of opinion, that he could not relieve the petitioner *Anne King*; and therefore he ordered the petition to be diſmiſſed. *Dav.* 254. In the matter of *James King*, a bankrupt, on the part of *Anne King*, his wife.

211. *J. S.* indebted by bond to the wife of *A.* became a bankrupt; the huſband comes in, and claims the debt, pays the contribution money, but dies before any dividend was made: the wife ſurvives, and dies alſo before any diſtribution.

Lord Chancellor directed the diſtribution to be made to the executors of the wife, and not to the executors of the huſband, repaying to the huſband's executors what was paid for contribution.

The huſband paying the contribution money did not alter the property of the debt; but it remained a choſe in action, and ſurvived to the wife. 2 *Vern.* 707. *Mich.* 1719. *Anonymus.*

212. *Miles* brought debt againſt huſband and wife, upon a bond entered into by the woman when ſingle, the defendants jointly plead in bar, that the plaintiff ought not to have his action, *&c.* and ſay, that after the intermarriage (*ſcil.*) in *September*, 5 *Ann. Williams* the huſband became a bankrupt, within the intent of the ſeveral ſtatutes made againſt bankrupts; and that a commiſſion upon thoſe ſeveral ſtatutes iſſued under the great ſeal, bearing date ſuch a day,

day, and directed to *M. K.* and *T. A.* &c. afterwards (*ſcil.*) ſuch a day, the ſaid *Williams* voluntarily ſurrendered himſelf to the major part of the commiſſioners, and from time to time ſubmitted himſelf to be examined upon oath by the ſaid commiſſioners; and in all things conformed himſelf to the ſtatute of 4 *Ann.* intitled, *An act to prevent frauds frequently committed by bankrupts*, and to all the other ſtatutes relating to bankrupts; and therefore the aforeſaid *John* and *Eleanor*, by virtue of the aforeſaid ſtatute, made in the parliament of the queen abovementioned, ſay, that the action aforeſaid aroſe to the ſaid *Miles* before the ſaid *John Williams* became a bankrupt; and *that* they were ready to verify; and therefore they demanded judgment, if the ſaid *Miles* ought to maintain his action.

The plaintiff demurred, and ſhewed for cauſe, that the debt ariſing upon a bond made by the wife while ſole, was not diſcharged by the ſtatute mentioned in the defendant's plea; and alſo, that the plea ought to have concluded to the country.

The defendants joined in demurrer,

And after ſeveral arguments in this caſe, *Parker*, chief juſtice, having ſtated the record at large, delivered the reſolution of the court.

The two great queſtios which have been made in this caſe are theſe.

1. Whether this, being on a bond given by the wife, *dum ſola*, be ſuch debt as ſhall be diſcharged by the bankruptcy of the huſband, by virtue of the ſtatute of 4 *Ann. cap* 17. mentioned in the plea.

2. Whether the defendants have well concluded their plea, or not; it being to the judgment of the court, and not of the country.

As to the firſt, we are all of opinion, that it is a debt within the act.

The words of the clauſe upon which it depends are, *the bankrupt ſhall be diſcharged from all the debts from him due and owing at the time he became bankrupt*; and

and then, in caſe he be ſued for any ſuch debt, the act directs, that *he ſhall and may plead in general, that the cauſe of action did not accrue before he became a bankrupt.*

Upon theſe words the immediate queſtion is, whether this was a debt due and owing by the huſband, at the time he became bankrupt?

It was ſaid, and (I think) admitted at the bar, that a debt due *by* the wife, and one due *to* the wife, *dum ſola*, muſt fall under the ſame conſideration.

This is very reaſonable, and therefore I have conſidered how far a debt due *to* the wife would be within this act, to be aſſigned by the commiſſioners of bankruptcy; and in order to underſtand this, it is neceſſary to go back to the former acts.

13 *Eliz.* c. 7. enacts, that the commiſſioners ſhall take order with the bankrupt's body, lands, and tenements (as well freehold as copyhold) goods, chattels, debts, *&c.* and ſell the ſame, *&c.* *See paragraph* 5.

Then comes the ſtatute of 1 *Jac* I. *cap.* 15. which, reciting that the authority given to the commiſſioners by the former act, was not full and perfect; for further remedy, gives them power to grant and aſſign all debts *due, or to be due, to and for the benefit of the bankrupt*; and the ſame to be recovered in the name of the aſſignees.

Now I take the intention of theſe laws to have been, that the bankrupt having been guilty of a fraud, ſhould not be truſted any more with the management of his eſtate; but that it ſhould be put into other hands, for the ſafety of his creditors; and that the bankrupt ſhould have no further intermeddling therewith.

So that upon this intention, all thoſe effects and debts, which he could take in, or turn into money, the aſſignees were deſigned to have in as full manner, either by action or otherwiſe, and that in their own name.

The

The beſt rule of conſtruing acts of parliament is by the common law, and by the courſe which that obſerved in like caſes of its own, before the act.

Thus it is, that the ſtatute *de donis*, which enacts, that tenant in tail, *non habeat poteſtatem alienandi tenementa*, to prevent their coming to the iſſue; and that a fine levied by him, *ipſo jure ſit nullus*. Now, the effect of this ſtatute being a diſability to alien to the prejudice of others; therefore the law ranks the perſon incapacitated thereby, with biſhops and other eccleſiaſtical perſons, and with huſbands, who were by the common law diſabled to alien, to the prejudice of their ſucceſſors and wives.

And therefore though the words be, that tenant in tail ſhall not have power to alien, and that his fine ſhall be void; yet it has been conſtrued, that a fine by tenant in tail is not merely void, but makes a diſcontinuance, thereby putting the iſſue to his *formedon*; and that other alienations either put the iſſue to his action, or allow of his entry, juſt as the law ſtood before in relation to biſhops, *&c.*

At common law it is a general rule, that *nobody can have an action but a creditor*, or, if he be dead, his repreſentative. But there are two caſes wherein this rule fails, (*viz.*) in the caſe of a forfeiture, and of an aſſignment to the king. For though a choſe in action cannot be aſſigned to a common perſon, yet it may to a king. And in both thoſe caſes, the king or his grantee, or aſſignee, may ſue for thoſe duties in their own name. 24 *H.* VII. 19. Though generally the grantee ſued in the king's name; but that was only in order to take advantage of the king's prerogative.

Now let us ſee how far the wife's debts were liable in thoſe caſes.

In caſe of forfeiture, as by outlawry, *&c.* the debts of the wife were always extended and ſeized.

In caſe of aſſignment of debts to the king, *Hob.* 2. 253. is an authority in point; and that notwithſtanding

ſtanding the 7th *Jac.* I. *cap.* 15. which makes aſſignments of debts void, other than ſuch as grew due originally to the king's debtor, or *bona fide*; for the purpoſe of that law was, that no debtor of the king ſhould procure another man's debt to be aſſigned, which was the common practice; but this, ſays the book, is his own debt, though not to his own uſe, which he may himſelf releaſe and diſcharge, and by the ſame reaſon may aſſign.

This proves two things.

Firſt, that the huſband might aſſign theſe debts by the common law.

Secondly, that he was not reſtrained from doing it by the ſtatute, becauſe they were the huſband's own debts.

This reaſon concludes to the caſe at bar.

Firſt, as it is the huſband's own debt within the words of the act.

Secondly, that as the huſband might aſſign it, *ergo*, ſo may the commiſſioners. Beſides, it is to no manner of purpoſe, and can ſerve no good end at all, to ſay, that ſuch debts are not aſſignable; for if they ſhould be left in the husband, as ſoon as ever he recovers them, the commiſſioners muſt have the money, and apply it to the uſe of the creditors.

But in order to confine the ſenſe of the words, *debts due and owing to him*, it has been objected,

Firſt, that the ſtatute does not extend to debts due to a bankrupt, as executor.

Reſponſ. This is true: but it is for this particular reaſon, becauſe they are appropriated to pay the debts of the teſtator; and if they were aſſigned, it would be a wrong, *viz.* a *devaſtavit*.

Secondly, it has been objected, that the ſtatute does not extend to debts due to the bankrupt, *jointly* with another.

Reſponſ. The caſe cited for that purpoſe from 1 *Lev.* 17. is not determined. Such debt might be aſſigned to the king by any one of the creditors, and

ſo it is adjudged, *Mich.* 19 *H.* VI. 47. and it would be forfeited by the outlawry of one.

However, that caſe is not before us. Thus far is plain, that a debt due from him and another would be within this act of 4 *Ann.* for it is ſo declared by the declaratory act of 10 *Ann.* which provides, at the ſame time, that the diſcharge of the bankrupt ſhall not extend to diſcharge the other joint debtor.

But this of an huſband and wife is a different caſe; for it is his debt, as he is one with her.

But it is contended, that the bankruptcy ought not to give the huſband a better right in his wife's debt, and bar her of her contingency by ſurviviorſhip.

Reſp. It does not give him a better right; for his releaſe for a conſideration to himſelf alone would have barred her of the contingency; and this is a releaſe in law, and amounts to the ſame thing.

Beſides, that is anſwered by the fiction in law, whereby the ſtatute of 1 *Jac.* cap. 15. and this ſtatute has made it as a debt, and a new ſecurity to the aſſignees. Suppoſe a bond was made to *A* in truſt for *B.* who becomes a bankrupt; the aſſignees may bring the action in their own name, though *B* muſt have brought it in the name of his truſtee.

Objected, the husband muſt join with the wife in this action; but the aſſignees cannot do it.

This is anſwered as before, and by the caſes of forfeiture and aſſignment to the king. But to put another caſe:

Suppoſe a bill of exchange be made to the wife *dum ſola*, the husband may aſſign it, and the aſſignee may bring the action in his own name.

This reaſoning holds ſtronger in the caſe of debts due from the wife; for,

Firſt, certainly it is the husband's debt, and the action muſt be brought in the *debet et detinet.* It is admitted to be the husband's debt after judgment; and it were hard to ſay, that a judgment of law charges

charges a man with a debt, who was not chargeable with it when that judgment was given againſt him.

Secondly, if the intent of that act be conſidered, and the queſtion aſked, *Cui bono ?* it will appear ſtill ſtronger.

The perſons concerned in this matter are,

Firſt, the bankrupt.

Secondly, the creditors.

Thirdly, the wife.

As to the bankrupt, if an action be brought againſt him on ſuch bond, what execution can the plaintiff have ? If he takes a *Fieri Facias*, or *Elegit*, as ſoon as he finds goods or lands, the commiſſioners ought to ſeize them ; this would be wholly ineffectual ; and if he takes a *Capias*, it will only ſerve to lay the bankrupt up in priſon, when all his eſtate, wherewith he ſhould make ſatisfaction, and deliver himſelf, is taken out of his power. And that is the reaſon of his being diſcharged, *viz.* becauſe his ability to pay is entirely taken from him.

And this diſtinguiſhes it from the caſe of an executor, and ſhews that he ought to be diſcharged as to the teſtator's debts ; for he retains his ability to pay them by keeping his effects, which he has, as executor ; and the commiſſioners cannot meddle with them, becauſe they are appropriated.

It was inſiſted at the bar, that he ought to be diſcharged from his debts ; becauſe he is obliged to part with all his eſtate, not only liable to pay thoſe debts, but all whatſoever wherewith he might pay his debts ; as for the purpoſe, copyhold lands, which are liable to no execution.

Secondly, as to the creditor.

It cannot be for his benefit, that this debt ſhould not be within the act ; for the bankrupt's whole eſtate will be otherwiſe diſpoſed of, and his action againſt the bankrupt can be worth nothing : but if this debt be within the act, then may he come in for his dividend.

The conſequence of the contrary opinion is, that you take from him every thing wherewith his debt may be paid, and at the ſame time will not let him in for a ſhare.

Thirdly, as to the wife.

It will be a diſcharge to her, at leaſt, a temporary one, *viz.* during the husband's life: but though it be not neceſſary to give any opinion upon that, yet I think it will amount to a perfect releaſe, and the wife will be diſcharged for ever.

But no harm can ariſe from this; for the creditor is ſuppoſed to have had his dividend, and the debt is paid in conſideration of law.

A caſe may poſſibly be put, where a woman being in debt, may make over all her effects, in truſt, and then marry a bankrupt, and by that diſcharge all her debts, and yet preſerve all her eſtate; but that would be a fraudulent conveyance, againſt creditors; *quoad*, as much of the eſtate as would ſatisfy their debts, and for that they might have remedy.

It was objected, that this diſcharge is a perſonal privilege, and not communicable to the wife.

Reſponſ. It is a neceſſary conſequence, that it muſt extend to her, becauſe every thing in the huſband's power is aſſignable, and all her eſtate is in his power. If the husband be poſſeſſed of a term for years, in right of his wife, it may be ſold on a *fieri facias*; and yet it is not actually transferred to the husband by intermarriage.

For theſe reaſons, we are all of opinion, that this is the husband's debt, within the meaning of the ſtatute.

As to the ſecond queſtion (*viz.*) whether the plea be good, or not?

We are likewiſe all of opinion, that it is ill, not to conclude to the country.

A liberty of pleading generally is given to the bankrupt, and ſo he may avoid the hazard of pleading ſpecially; but then he muſt take upon him the proof

proof of his conformity to the ſtatute in every particular: or, if he thinks fit to plead the matter ſpecially, then he muſt ſet forth every point; and by it he has this advantage againſt the plaintiff, that he muſt reply one particular only; upon which iſſue muſt be taken. Here the defendant has pleaded the matter ſpecially; but not ſet forth the whole; and therefore it is ill for that reaſon; for, by the expreſs words of the act, this is to be pleaded ſo as that the whole merits may be tried.

There are ſeveral caſes at common law where a man ſhall conclude his plea to the country, though there be no affirmative and negative to prevent the inconvenience that would ariſe by going on to a replication, as in 33 *H.* VI. 21. to a fine, *quod partes finis nihil habuerunt*; *& de hoc ponit ſe ſupra patriam.*

So in *Dower. Nunque ſeiſie de Dower*, *& de hoc*, &c.

And the reaſon of this is, for that it would be inconvenient to go on to a replication; becauſe to reply generally, would leave it too large and comprehenſive; and to reply any particular kind of eſtate, would be too narrow, and conſequently immaterial.

This ſtatute has formed a new general iſſue in this caſe; and this was the foundation of the judgment in *Bird* and *Lacy*'s caſe. *Mich.* 6. *Ann.* C. B. *Rot.* 321, that a plea upon this act was well concluded to the country; and if ſo, it cannot conclude to the court.

It may be obſerved, on the ſtatute of ſewers 23 *H.* VIII. *cap.* 5, that, by the words of that act, a general replication is expreſly given, to avoid the forcing the plaintiff to a ſingle point; and ſo the miſchief which would be in this caſe, is prevented. Thus it muſt have been in this act, if it had not been the intention of it to make the plea a general iſſue.

For this fault in the plea, which is ſhewn for cauſe of demurrer, and which would put a difficulty on the plaintiff, not intended by the ſtatute, judgment muſt be given for the plaintiff. 1 P. *Will.* 249. *Trin.* 1714. *Miles* v. *Williams et ux. Trin.* 1714.

213. A feme ſole is a mortgagee in fee for eight hundred pounds, and marries a tradeſman, who becoming a bankrupt, a commiſſion of bankruptcy is taken out againſt him, and the commiſſioners aſſign over all his eſtate, real and perſonal: afterwards the husband dies, and the writings relating to this mortgage being in the aſſignee's hands, the widow of the bankrupt brings a bill in equity againſt the aſſignees for the writings and to have the benefit of the mortgage.

This cauſe came on to be heard, and for its difficulty was ordered to be ſpoke to again; when his honour delivered his opinion ſolemnly for the plaintiff, the wife: but being afterwards diſſatisfied with that opinion, he ordered the decree to be ſtayed and to be attended again by counſel.

Whereupon his honour gave his opinion, that if there had been any articles before the marriage, purporting, that this mortgage money ſhould continue in the wife, as her proviſion, or ſhould be aſſigned in truſt for her, there would have been a ſpecific lien upon the mortgage, and have preſerved it from the bankruptcy.

Alſo, it might have been a matter of different conſideration, if the aſſignees had been plaintiffs in equity, and deſired the aid thereof, to ſtrip an unfortunate widow of all that ſhe had in the world, towards the doing of which, equity would hardly have lent any aſſiſtance; becauſe the aſſignees claiming under the bankrupt husband, could be in no better plight than the husband would have been; and, if the husband had in equity ſued for the money, or elſe prayed, *that the mortgager might be foreclоſed*, equity, probably, would not have compelled the mortgager

to

to have paid the money to the husband, without his making ſome proviſion for his wife; or at leaſt the wife, by an application to the court againſt the huſband and the mortgager, might have prevented the payment of the money to the husband, unleſs ſome proviſion was made for her.

But, in the preſent caſe, the widow was plaintiff againſt the aſſignees; ſo that ſhe, and not the creditors, ſought the aid of equity.

And here being, in the mortgage deed, a covenant to pay the mortgage money to the wife, this debt, or choſe in action, was well aſſigned by the commiſſioners to the aſſignees, and veſted in them like the caſe of *Miles* and *Williams* [*the preceding caſe*] where a bond made to a wife (*dum ſola*) was adjudged to be liable to the husband's bankruptcy, and aſſignable by the commiſſioners.

Wherefore, if the right to the debt was veſted in the aſſignees, (as plainly it was) though the legal eſtate of the inheritance of the lands in mortgage continued in the wife; yet this was not material, it being no more than a truſt for the aſſignees, like the common caſe, where there is a mortgage in fee, and the mortgagee dies; here the mortgage-money belonging to the executor, though the heir takes the legal eſtate by deſcent: yet he is but a truſtee for the executor; for the truſt of the mortgage muſt follow the property of the debt, elſe the mortgager would be in a very hard caſe, liable to be ſued by the aſſignees of the commiſſioners upon the covenant, and alſo in an ejectment by the wife of the mortgagee: whereas the latter ſuit would be injoined in equity.

Then it was inſiſted, that here were articles entered into before the marriage of the bankrupt and his wife; by which the husband covenanted to ſettle the wife in the manor of *Dale*, or to leave her one thouſand pounds within three months after his death.

But in this agreement it appeared, that the husband had his election all his life-time; and that, if the wife had brought her bill in equity againſt the husband, ſhe could not have compelled him to do the one or other: neither could ſhe, upon ſuch bill, or otherwiſe, have compelled him to give any further or better ſecurity for the payment of this one thouſand pounds, becauſe ſhe had that ſecurity which ſhe at firſt agreed to take; and the court could not better it againſt her own agreement.

But upon another point, *viz.* as to two hundred pounds, part of the wife's portion, on a note given by the husband at his marriage, ſignifying his conſent, that the wife ſhould have the two hundred pounds, the court held the ſame was ſpecially bound thereby; ſo that, with reſpect to this only, the plaintiff was relieved, and the bill, as to the reſt, diſmiſſed. 1 P. *Will.* 458. *Boſwell* v. *Brander.*

214. A man had deviſed lands, which were in mortgage, to be ſold, and the ſurplus of the money to be paid to his daughter. The daughter married a man, who ſoon after became a bankrupt, and the commiſſioners aſſigned this intereſt of the wife's. The husband died, and the aſſignees brought this bill againſt the wife and truſtees, to have the lands ſold, and the ſurplus of the money paid to them. But the court would not aſſiſt in ſtripping the wife (who was wholly unprovided for) of this intereſt, but diſmiſſed the bill. *Mich.* 1698. At the Rolls, *Parker* and *Dykes.*

215. The defendant, upon marriage of his ſon, ſettles lands on himſelf for life, remainder to his ſon, *&c.* and covenants, during his own life, to pay his ſon fifteen pounds *per annum.* The ſon becomes a bankrupt, the plaintiff, as an aſſignee, brings the bill againſt the defendant, the father, to have the benefit of this agreement, and to compel payment of the fifteen pounds *per annum.*

Per

Per curiam: an aſſignee under a ſtatute of bankrupt, is not entitled to have the performance of an agreement made with the bankrupt; and that it was ſo adjudged in the caſe of *Drake* and the mayor of *Exeter*: and therefore diſmiſſed the bill. 2 *Vern.* 194. *Mich.* 1690, *Moyſes* v. *Little.*

216. *William Daviſon* having deviſed a legacy of ſix hundred pounds to his ſon, payable at twenty-one, for which he had obtained a decree, and ſix hundred thirty-ſeven pounds reported to be due, before he received the money, he became bankrupt, and the commiſſioners aſſigned the legacy and benefit of the decree.

The bill was brought by the aſſignees to have the benefit of the decree, to which the defendants demurred; inſiſting that a legacy was not within the compaſs or proviſion of any of the acts made againſt bankrupts, to be aſſigned to the creditors.

But the demurrer was over-ruled; and ſaid, that the act of parliament ought to be taken in the moſt beneficial ſenſe for the advantage of the creditors. 2 *Vern.* 432. *Hil.* 1701. *Toulſon* v. *Grout.*

217. One ſeized of lands in fee, owes a debt by ſtatute, and afterwards becomes a bankrupt, and the creditors, by ſtatute, extends the lands. Then a commiſſion of bankruptcy is ſued out; and whether the lands ſhould be liable to the ſtatute creditor, was the queſtion.

Upon importunity of council, lord chancellor referred this to the judges of the Common Pleas; before whom it was inſiſted by ſerjeant *Pratt* and Mr. *Williams*, that the lands were actually bound by the ſtatute; and the creditor relying on this ſecurity, it would be hard, that the doubtful words of the ſtatute 21 *Jac.* I. *cap.* 19, ſect. 9, ſhould diſcharge it: and, with regard to that clauſe in the act which ſays, *that creditors by judgment, ſtat.* &c. whereof no execution, or extent, *is ſerved, or executed on the lands or goods of the bankrupt, before his becoming bankrupt, ſhall*

ſhall not be relieved for more than a ratable part of their juſt debts, without reſpect to the penalty of the ſtatute or judgment, they urged, This extended only to relieve againſt the penalty; and the words *creditors ſeeking relief ſhall not be relieved*, &c. muſt be intended to mean, *ſhould not be relieved, upon the commiſſion of bankruptcy, in a court of equity*; but, if at law they could prevail, (as here, by an extent upon the land) the ſtatute did not hinder them.

But all the judges of the Common Pleas, *contra*, who held, that the clauſe of the ſtatute was full and plain, that all the creditors of the bankrupt, unleſs where there was a mortgage, ſhould be equally paid; and *Trevor*, chief juſtice, ſaid, a judgment on recognizance did no more bind the lands, than the teſte of a *fieri facias* bound the goods at the time of making this ſtatute: and it was plain, that if the *fieri facias* was not ſerved and executed, ſuch creditor, notwithſtanding his ſuing out his *fieri facias*, ſhould come in only in proportion to the creditors, even by the ſimple contract. 1 *P. Will.* 92. *Eaſt.* 1706. Sir *George Newland* and *Beckley*, executors of *Watts* againſt

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218. In *February*, 1716, the defendant, *Fletcher*, being ſeized in fee of ſome lands in *Bedfordſhire*, borrowed one thouſand five hundred pounds of the plaintiff, *Orlebar*, (one of the maſters in Chancery) on a judgment. Afterwards, *viz. Auguſt* the 20th, 1717, the defendant, *Fletcher*, articled with the other defendant, the duke of *Kent*, to ſell the premiſſes to the duke, in conſideration of five thouſand pounds to be paid down, and ſix hundred and fifty to be paid at *Chriſtmas* then next; the duke to be let into poſſeſſion at *Michaelmas*: ſubſequent to which tranſactions, the defendant, *Fletcher*, becoming a bankrupt, the plaintiff, Mr. *Orlebar*, brought his bill againſt the duke of *Kent*, *Fletcher*, the bankrupt, and the aſſignees under the commiſſion, praying that the ſix hundred and fifty pounds, remaining in the

duke

duke of *Kent*'s hands, might be paid to the plaintiff towards ſatisfaction of his judgment.

Upon the opening of the cauſe, the maſter of the Rolls obſerved, that by the ſtat. of 21 *Jac.* I. *cap.* 19, ſect. 9, it is provided, that *creditors by judgment, ſtatute, recognizance, whereof no extent is ſerved or executed on a bankrupt before his bankruptcy, ſhall not be relieved for more than a ratable part of their juſt debt:* to which Mr. *Williams* replied, that the words *ſhall not be relieved for more*, &c. imported only, that they ſhould not have relief upon the commiſſion; but if they could extend the defendant's lands, they were to be left at liberty: that the ſtatute only reſtrained the judgment-creditor from proceeding againſt the perſonal eſtate of the bankrupt: but as to the real eſtate, upon which the judgment was an actual and veſted lien, it could never have been the intention of the parliament to diveſt a creditor of this right: beſides, the other words of the ſtatute *without regard had to the penalty*, might intend this clauſe to be ſatisfied, by relieving againſt the penalty.

However, the court interrupted him while he was ſpeaking to this point, and ſaid, this was attempting to diſturb what was already ſettled; that it had been determined at law, that where a judgment was not ſerved, or executed, the cognizance thereof ſhould only come in *pro rata*, with the other creditors of the bankrupt.

Then he urged, that theſe articles of *Fletcher*, before his bankruptcy, to ſell the land to the duke of *Kent*, eſpecially when the duke had paid the greater part of the purchaſe-money, and was in poſſeſſion, were as a ſale in equity. That, if a trader, ſeized of land in fee, ſhould confeſs a judgment to *A*, and then ſell the land to *B*, and afterwards becomes a bankrupt; though *A*, the judgment-creditor, could not come in upon the bankrupt's eſtate, for any more than his proportion, with the other creditors, yet he would be at liberty to extend his judgment againſt

the

the purchaſer, who bought the land prior to the bankruptcy: which ſeemed to be admitted.

But in the principal caſe, the court ſaid, that the duke of *Kent* could not be deemed a purchaſer until he had paid the ſix hundred and fifty pounds, which remaining in the duke's hands, was part of the perſonal eſtate of the bankrupt, and muſt be liable to his creditors; that the duke was not compelled to pay it, unleſs, upon his having a good title, which was to be made him by the aſſignees of the commiſſion of bankruptcy, who had the legal eſtate of the premiſes aſſigned to them by the commiſſioners.

Wherefore, *per curiam*, let the aſſignees convey the premiſes in fee to the duke of *Kent*, in the ſame manner as the bankrupt had articled to do, they ſtanding in his place; and, in conſideration of this, let his grace pay the ſix hundred and fifty pounds, the remainder of his purchaſe-money, to the aſſignees for the benefit of the creditors: and as to the plaintiff, Mr. *Olebar*, the judgment-creditor, he muſt come in for a proportion only with the reſt of them. 1 P. *Will.* 737. *Mich.* 1721. *Orlebar* v. *Fletcher*.

219. *J. S.* petitioned to take a commiſſion of bankruptcy againſt *Lee*; and his debt amounting to one hundred pounds, appeared to conſiſt of notes made payable by the bankrupt to other perſons, who had indorſed them to the petitioner, and to have been bought in by him at ten ſhillings in the pound. Upon which it was objected, that ſuch creditor, who came by his debt in this manner, was not intitled to ſue out a commiſſion.

Lord chancellor. Though the petitioner for this commiſſion has thus gained the notes given by the bankrupt, yet he is plainly a creditor. Juſt as if the perſons to whom the bankrupt, before his bankruptcy, gave theſe notes, had paid an underate for them. Nay, though they had been given without any conſideration, yet are they now become his debts.

debts, and the legal right thereto veſted in the indorſee. Otherwiſe, in caſe of an aſſignment of a bond, foraſmuch as ſuch aſſignee, not being the legal creditor, could not have taken out a commiſſion. alſo, had the indorſement in the principal caſe been made after the bankruptcy, it might be a queſtion whether ſuch indorſee would be intitled to a commiſſion, he not being a creditor for one hundred pounds, or capable of taking out a commiſſion at the time of the party's becoming a bankrupt. 1 P. *Will.* 782. *Hil.* 171. *Ex parte Lee.*

220. Upon the petition of the creditors of Mrs. *Cock*, the bankrupt, to be let in before the commiſſioners for their whole debts, the caſe was: Mrs. *Cock* drew a bill of exchange in *England* upon her brother *Vandermaſh* in *Holland*, for one hundred pounds, payable to *J. S.* *Vandermaſh* accepted the bill, and he and Mrs. *Cock* became bankrupts; and out of the effects of *Vandermaſh*, ſo much money was paid by the aſſignees of the commiſſion of bankruptcy againſt him to his creditors, as amounted to forty pounds *per cent.*

And now ſome of the creditors of Mrs. *Cock* petitioned lord chancellor, that they might come in as creditors of Mrs. *Cock* for the whole one hundred pounds, alledging that though this ſhould be granted them, yet her effects would not extend to ſatisfy them their juſt debt of one hundred pounds, even including the forty pounds *per cent.* which they had before received out of *Vandermaſh*'s eſtate, there remains but ſixty pounds *per cent.* due, and therefore ought not to come in any otherwiſe than as a creditor for ſixty pounds, in regard forty pounds of the debt has been paid off and diſcharged; and it cannot be material whether this was paid off By *Vandermaſh*, the drawer, or by Mrs. *Cock* the drawer; foraſmuch as there remains but ſixty pounds due. And if the conſtruction were otherwiſe, it would diſappoint the intention of the ſtatutes of bankrupts,

which

which order an equal diſtribution of the bankrupt's eſtate among all the creditors.

Lord chancellor. It is not material whether this payment of forty pounds *per cent.* made by the aſſignees of the commiſſion againſt *Vandermaſh*, was out of the effects which Mrs. *Cock* had in *Vandermaſh*'s hands; for if ſo, it would be as if paid by Mrs. *Cock* herſelf; and if paid by her, then there can be but ſixty pounds *per cent.* due; and conſequently the creditors ſhould come in for no more than this remaining ſixty pounds.

On the other hand, if the forty pounds *per cent.* paid by the aſſignees of *Vandermaſh*'s eſtate, was really paid out of *Vandermaſh*'s eſtate, then *Vandermaſh*'s eſtate is as a creditor for this forty pounds, and the creditors of Mrs. *Cock*'s eſtate muſt come in creditors for the whole one hundred pounds, and to be taken as truſtees for the forty pounds debt, paid out of *Vandermaſh*'s effects.

To make this plainer; ſuppoſe *A* was principal in a bond, and *B* ſurety for the payment of one hundred pounds; and *A* and *B* becoming bankrupts, *A* had paid forty pounds, the creditors of *A* and *B* would come in only for the remaining ſixty pounds: but if *B*, the ſurety, had paid the forty pounds, or if it had been paid out of the effects of the ſaid ſurety, then *B*, the ſurety, or his eſtate, had been creditor, for this forty pounds; and conſequently the creditors, or aſſignees, under the commiſſion of bankruptcy againſt *A*, the principal, though the forty pounds had been paid by the ſurety, yet muſt have come in for the whole one hundred pounds; and as to the forty pounds, they muſt have been accountable to *B* the ſurety.

Therefore, in this caſe, let the creditors of Mrs. *Cock* come in for the ſixty pounds *per cent.* and let it be enquired out of whoſe effects the 40*l. per cent.* was paid by *Vandermaſh*'s aſſignees, and the 40*l. per cent.* ſhall appear to have been paid out of *Vandermaſh*'s own effects, then let the creditors of Mrs. *Cock*

Cock come in for the whole one hundred pounds; out of which they muſt anſwer forty pounds *per cent.* to the creditors of *Vandermeſh.* 2 P. *Will.* 89. *Hil.* 1722. *Ex parte Ryſwicke.*

221. *A* gives a promiſſory note, payable to *B* or order, for two hundred pounds, value received. *B endorſes* it to *C*, who orders it to *D*.

A becoming bankrupt, a commiſſion of bankruptcy iſſued out againſt him, and *D* comes in as a creditor, and pays his contribution-money, as claiming a debt of two hundred pounds, and proves the debt.

Then *B* becomes a bankrupt, and a commiſſion being taken out againſt him, *D*, in like manner as before, pays his contribution to this commiſſion as for the whole debt of two hundred pounds, and proves it.

Afterwards *C*, the laſt indorſer, becomes a bankrupt: and, on a commiſſion taken out againſt him, *D*, as before, pays his contribution money as for the whole debt of two hundred pounds, and proves the ſame.

The aſſignees under the commiſſion of bankruptcy againſt *A*, the firſt bankrupt, pay a dividend to *D*, after the rate of five ſhillings in the pound, out of *A*'s eſtate; and then the aſſignees in the commiſſion of bankrnptcy againſt *B*, propoſe to make a dividend out of *B*'s eſtate, but refuſe to pay *D*'s dividend as a creditor for the whole two hundred pounds, but only for the one hundred and fifty pounds of the two hundred pounds, being paid off by the dividend made out of *A*, the firſt bankrupt's eſtate.

Upon this *D* petitioned the lord chancellor, and inſiſted, that, as the commiſſioners in the commiſſion againſt *B* took *D*'s contribution money, as of the whole debt of two hundred pounds, ſo they ought to allow *D* a dividend for the ſame; and eſpecially in regard all the dividends which were like to come to him out of the eſtates of the three bankrupts, would not be near ſufficient to pay his juſt debts;

and

and that as to *D*, ths firſt drawer, and the two indorſers, were equally his debtors for the whole. Wherefore it was prayed, that *D*, the petitioner, ſhould have his dividend out of the eſtate of *B*, the bankrupt, for his full debt of two hundred pounds, and not as reduced to one hundred and fifty pounds, by his having received the dividend of five ſhillings in the pound, out of the eſtate of *A*.

Lord chancellor. The five ſhillings in the pound, which the petitioner *D* had received upon the dividend out of the eſtate of *A* muſt be taken to reduce and leſſen the debt due to the petitioner upon this note. For five ſhillings in the pound is paid in part of the debt, by neceſſary conſequence ſo much leſs of the debt remains due, and therefore the petitioner muſt take a dividend as for a debt of one hundred and fifty pounds *only* unpaid upon the note. But with regard to ſo much of the contribution money as the petitioner *D* paid to the aſſignees in the commiſſion of bankruptcy ſued out againſt *B*, the firſt indorſer, beyond the debt of one hundred and fifty pounds remaining due on the ſaid note, let that be refunded. 2 P. *Will.* 407. *Eaſt.* 1727. *ex parte Lefebure.*

222. The plaintiff, who was ſon and heir, and alſo executor, of *Nicholas Venaker*, his father, ſued the defendants as commiſſioners and aſſignees of a ſtatute of bankruptcy againſt one *Shelbury*; and this was to be let in to pay his contribution money, and to have a proportionable benefit of the ſaid bankrupt's eſtate amongſt the reſt of his creditors.

The caſe was, one *Shelbury*, who was a ſcriviner, and agent for the plaintiff's father, had got ſeveral thouſands of pounds of the father's money in his hands; for which the father had only *Shelbury*'s ſingle bonds, on ſome of which he got judgment and execution on *Shelbury*'s goods, which were appraiſed at a leſs ſum than was due; part whereof came to the father's poſſeſſion in his life-time, or to his bailiff,

iff, one *Reeves*, after his death; and were ſold by the ſaid father, or the ſaid *Reeves*; but no part thereof came to the plaintiff, or his aſſigns.

That a commiſſion of bankruptcy was ſued out againſt the ſaid *Shelbury* by the defendants, who pretend that *Shelbury* had committed an act of bankruptcy before the father had obtained any judgment againſt him.

That *Leeſon* and *Naſh* have brought ſeveral actions againſt the now plaintiff and his truſtees, in three of which actions they were non-ſuited; that in another action he had obtained a verdict for nine hundred and twenty pounds; ſince which the plaintiff, before any aſſignment of the bankrupt's eſtate, hath offered to pay his contribution-money; and that the defendants promiſed he ſhould have notice before any aſſignment made, and come into the ſtatute; but yet have excluded the plaintiff, who is a creditor for above ſix thouſand pounds principal money.

The commiſſioners inſiſt, that they found *Shelbury* a bankrupt before the father's judgment; and the aſſignees ſay, that they have recovered againſt the plaintiff fifty-three pounds damages in an action of trover for *Shelbury*'s goods in his hands; and they all denied any promiſe to give him notice when a dividend ſhould be made by any aſſignment; and that before it was made, the plaintiff ſhould come in; and that he ſhould not expect it, becauſe he never paid any thing towards the charge of the commiſſion, nor had given any aſſiſtance towards the diſcovery of the bankrupt's eſtate; but had rather concealed it, and converted it to his own uſe; ſo that he could not be entitled to any relief, having not ſought it, and paid his contribution money, as directed by the ſtatute of bankrupts: and they plead the verdict and judgment obtained at law againſt the plaintiff, which, upon argument, had been heretofore allowed.

But now the council for the plaintiff offering, that he ſhould, ſtand in his father's ſtead, and be accountable

for all that the father had received of the bankrupt's eſtate, according to the real values the ſame were appraiſed at in the inventory thereof; and that he ſhould pay a reaſonable proportion of contribution money, ſo that he might be let into the ſtatute.

It was decreed, that he ſhould ſtand in his father's ſtead, and come to an account with the defendants for the whole eſtate of the bankrupt, according to the real value thereof, to be appraiſed in an inventory; and that, before the ſeventeenth of *March*, he pay into the hands of the treaſurer appointed, for the benefit of the creditors, the ſaid ſum of nine hundred and twenty pounds, which he had recovered, and acknowledged ſatisfaction on the ſaid judgment at his own charge: that then the recognizance entered into by the plaintiff, and his ſureties, on continuing the injunction in this cauſe, be vacated; and that, before he be let in as a creditor, he pay to the ſaid treaſurer contribution-money, according to the bulk of his debt, ſo that the contributions of all the creditors may be reduced to an equality, according to their reſpective debts; and thereupon he is to be admitted into the ſtatute. *Finch* 60. *Hil.* 1673. *Venaker* againſt *Naſh* and others.

223. The plaintiffs lived in *Glouceſterſhire*, where alſo one *Blithe* did live, who owed them money, and having committed ſome act of bankruptcy, he afterwards came to an account with the plaintiffs and ſold them ſeveral parcels of goods, in ſatisfaction of their debts.

The defendant lived in *London*, to whom the ſaid *Blithe* was indebted, and they having employed a perſon to diſcover his eſtate in the country, and how it had been diſpoſed, and to procure the ſame to be diſtributed equally among all his creditors. It was at laſt agreed amongſt them that the plaintiffs ſhould wave the diſpoſal of the goods to them already made by the ſaid *Blithe*, and that they ſhould have an equal diſtribution with the defendants in proportion to their reſpective debts; and that an inventory ſhould

ſhould be taken, and an equal diſtribution made; and for that purpoſe, that a commiſſion of bankruptcy ſhould be taken out at *London*, and executed there, and all the ſaid debts put in hotchpot.

Accordingly, a commiſſion was executed at *London*, but without giving notice thereof to the plaintiffs, or any commiſſioners ſent into the country, to join with the others therein, in order to a perfect diſcovery of the ſaid *Blithe*'s eſtate, as agreed on.

And afterwards, the defendants prevailed with the commiſſioners, within a month after the execution of the commiſſion, to make an aſſignment and dividend of the ſaid bankrupt's eſtate, contrary to the ſaid agreement, intending thereby to exclude the plaintiffs; and now refuſe to let them come in for their ſhares, though they have offered to pay their contribution money, and proportion of the charges of the commiſſion; but have brought actions of trover for the goods ſo ſold and delivered to the ſaid *Blithe*.

To be relieved againſt which actions, the plaintiffs have brought this bill; and that the ſaid agreement might be performed, and the dividend made amongſt the defendants be ſet aſide; and that the plaintiffs may be let in to have an equal diſtribution with them: all which mattters appearing to the court, though the defendants denied the ſaid agreement, yet ſuch relief was decreed as the plaintiffs had prayed. *Finch* 326. *Mich.* 1677. *Eſworth and Manſell, and others*, againſt *Kent and others*.

224. An action was brought by the plaintiff, an aſſignee, under a commiſſion of bankruptcy againſt the defendants, commiſſioners of land-tax. In this caſe, one *Farlow* was a collector of the land-tax, and had collected a great deal of money for the public uſe; and, on the 7th of *July*, 1731, abſconded and became a bankrupt; and, on the 16th of the ſame month and year, the commiſſioners brought their warrant and ſeized his goods, *&c.* after a commiſ-

ſion was taken out, and aſſignees appointed. This caſe was tried before Lord *Raymond*, and verdict given for the plaintiff, ſubject to the opinion of the court.

Serjeant *D.* The only queſtion in this caſe is, Whether the act of bankruptcy, ſo took away the property of the goods before aſſignment, as to make them ceaſe to be his?

C. J. If an extent be iſſued out, nay only teſted before the goods, *&c.* are aſſigned, that extent will be good.

D. That is a prerogative caſe; but this is in the caſe of a private perſon, and it is like the caſe of an adminiſtration granted, which veſts the property of the inteſtate's goods in the adminiſtrator from the time of the inteſtate's death. In *C. B.* in *London*, 3 *Geo.* II. *Andrews* and Sir *Matthew Decker*'s caſe was tried at *niſi prius* before Chief-juſtice *Eyre*; and the action was brought againſt Sir *Matthew* for a falſe return to a *fieri facias*, viz. *nulla bona*. It appeared on evidence, that goods of the defendant were in the houſe at the time of the return; but that the party, whoſe goods were to be taken, became a bankrupt before the goods were delivered to the defendant; and that a commiſſion was iſſued againſt him; but his goods were not aſſigned over by commiſſioners. Here the commiſſion was held to be ſufficient proof of his being a bankrupt.

Serjeant *E.* This caſe concerns the crown, and therefore the property is not altered till aſſignment, and an extent in aid executed before the aſſignment is good; ſo in 3 *Keb.* 14, the crown is not bound by ſtatutes relating to bankrupts; ſo Sir *William Jones*, 203, an extent and a warrant from the commiſſioners of the land-tax, alters only the manner of collecting the money of the crown. By the ſtatute of 3 *Geo.* II. fo. 25, if any collector refuſes to pay the money which he has collected, any commiſſioner may commit him, and ſeize his eſtate; and

and this is a new law, and ſhall controul all the former reſolutions. 3 *Lev.* 69, 191.

D. I agree that the property of the bankrupt's eſtate does not veſt in the plaintiff till the aſſignment, ſo as to give him an action; but when that is made, it gives him, by relation, a property from the time of the bankruptcy. This caſe does not concern the crown; for, by the ſtatute of 3 *Geo.* II. fo. 18, it appears, that the ſeizure of the collector's eſtate is for the benefit of the pariſh, which is anſwerable for the money at all events; therefore the pariſh is to return to the commiſſioners ſubſtantial men of the pariſh to be collectors and aſſeſſors; and the money collected comes not to the crown till it is paid into the hands of the receivers.

C. J. In this caſe are two queſtions. The firſt is, Whether, if this be the caſe of a private perſon, what effect an act of bankruptcy has on the goods in that caſe before an aſſignment? In the caſe of a private perſon, there is no actual veſting the bankrupt's eſtate before aſſignment? becauſe the commiſſioners have only a power of diſpoſal; but after aſſignment they veſt to many purpoſes, by relation from the time of the bankruptcy; as to avoid the acts done by the bankrupt himſelf; and therefore I think, if a judgment be given againſt one before bankruptcy, and the execution be compleatly executed by ſale of the goods and payment of the money over before the aſſignment, that the execution will be good. But here, in the caſe of a private perſon, the execution would not be compleated; for the goods were not diſpoſed of by the officer before the aſſignment; and then I think this commiſſion will over-reach it: ſo the queſtion is, Whether this is a prerogative caſe? and it ſeems to me that it is; for, though the money, when levied, is to be applied to the public uſe, yet it is always conſidered as money of the crown; therefore it is always recovered by the

prerogative power: and I think it hard to be imagined, that the ſummary remedy given to the commiſſioners by the ſtatute of 3 *Geo.* II. ſhould put the crown in a worſe caſe than it was before; and if an extent in this caſe had been ſued out, the goods would have been bound even from the teſte of it; and there could be no relation.

The queſtion here is, Whether this warrant can have the ſame effect as an extent would have had? As to the pariſh being liable, that makes not leſs the money of the crown than before; for that is only giving the crown a double ſecurity for the money. And, in the caſe of *Box* and *Norton*, it was held, that an extent and execution after aſſignment would be good. The other judges ſaid little to it. See *Salkeld*, 111; contrary to *Andrews*'s caſe, cited by *Darnal*; and *per curiam* it was ordered to ſtand over. 7 *Geo.* I. before Lord *Raym.* *Braſſey* and *Dawſon.* *Dav.* 386.

225. *Richard Wheeler*, being ſeized of a copyhold eſtate, borrowed four hundred pounds of the plaintiff in 1698, and ſurrendered into the hands of two cuſtomary tenants, the copyhold eſtate in queſtion, to be preſented at any court after *September*, 1699, defeaſible on paying the four hundred pounds and intereſt. The mortgager paid the intereſt for four years together, but no care was taken to get the ſurrender preſented; and, in the mean time, the mortgager, *Wheeler*, became a bankrupt, and died inteſtate and inſolvent. After his death the ſurrender was tendered, but the homage refuſed to preſent it; becauſe, by the cuſtom of the manor, confirmed by act of parliament all ſurrenders were to be void, if not preſented within twelve months after they were made.

The bill was brought againſt the aſſignees, and the heir to be relieved, and to ſupply the defect of the ſurrenders not being preſented in time.

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The lord-keeper, upon the firſt hearing of the cauſe, inclined to diſmiſs the plaintiff's bill; and thought it more reaſonable that he ſhould ſuffer for his own default than the other creditors.

But the cauſe ſtanding in the paper to be further heard upon the twentieth of *February*, and the lord-keeper having been attended with the precedent of *Burgh* and *Francis*, where the court had ſupplied the defect of livery againſt judgment-creditors, he was pleaſed to declare, that although upon hearing of the cauſe he inclined not to relieve the plaintiff, becauſe, through his neglect of getting the ſurrender preſented, the creditors might be poſſibly drawn in to give the greater credit to the bankrupt: and the ſtatute of bankrupts provides, *if goods remain in the hands of the bankrupt, that they ſhall be liable to the creditors, and may be ſold as part of the bankrupt's eſtate, notwithſtanding any bill of ſale*, &c. Yet it was too hard to extend a penal law in a court of equity to the prejudice of the plaintiff, who was in the nature of a purchaſer by a defective conveyance, and had contracted and agreed for a ſecurity on thoſe lands, which the other creditors had not; but lent to the bankrupt upon a general credit, and could therefore be entitled to no more than what properly was the bankrupt's; and againſt the bankrupt himſelf the plaintiff had a plain equity, and he muſt have been decreed to have ſupplied his defective conveyance: therefore decreed, the defendants to pay the plaintiff his principal, intereſt, and coſts, or to be foreclоſed; and the plaintiff to be admitted to hold and enjoy againſt the defendants.

This caſe is likewiſe cited in 1 *P. Will.* 280, in the caſe of *Finch & al'* verſus *the earl of Winchelſea*. 2 *Vern.* 564. *Mich.* 1706. *Taylor* verſus *Wheeler.*

Title to a copyhold cannot be made by the commiſſion of bankrupts, without there be a ſurrender and admittance. 1 *Keb.* 24. *Eaſt.* 13 *Car.* II. *B. R.*

226. On the 28th of *July*, 1744, *Ruth Grier*, widow and adminiſtrator of *John Grier*, deceaſed, preferred a petition to Lord *Hardwicke*, chancellor; and in it ſhe ſet forth, that, in the year 1743, a commiſſion of bankruptcy had iſſued againſt the ſaid *John Grier*, and he was duly found bankrupt; and an aſſignment had been made of his eſtate and effects; and, that the aſſignees had made a dividend of ten ſhillings in the pound, and ſince the dividend *Grier* died inteſtate, and without iſſue; and, that ſince his death ſhe had obtained letters of adminiſtration to be granted to her.

That, by the ſtatute of 5 *Geo.* II. *cap.* 30, ſect. 8, It is enacted, *&c.* *See paragraph* 89.

Therefore, the ſaid *Ruth Grier*, as adminiſtratrix to her huſband, petitioned his lordſhip, that ſhe might be entitled to receive ſuch allowance under that commiſſion, as her huſband would have been entitled to had he been living. But it appearing, that *John Grier* had never obtained his certificate, and the tenth ſection of the ſtatute of 5 *Geo.* II. expreſly declaring, *&c.* *See paragrath* 91. And by virtue of that act, neither the ſaid *John Grier*, or the ſaid *Ruth*, as his adminiſtratrix, appearing to be intitled to ſuch allowance, therefore his lordſhip diſmiſſed the petition. *Dav.* 523.

October 20, 1744. In the further matter of the ſaid *John Grier*, a bankrupt, on the petition of *Thomas Groom*, eſquire, *Thomas Symonds* and *John Sharpe*,

Articles of agreement were entered into, between the ſaid *John Grier*, of the firſt part, *Ruth Groom*, of the ſecond part, and the ſaid *Thomas Groom*, *Thomas Symonds*, and *John Sharpe*, of the third part; reciting that a marriage was intended to be had between the ſaid *Ruth Groom* and the ſaid *John Grier*, in conſideration of ſix hundred pounds to him paid by the ſaid *Thomas Groom*, as the marriage portion of the ſaid *Ruth Groom*, his daughter, and for making ſome proviſion, ſupport and maintenance for the ſaid *Ruth*

and

and her iſſue, in caſe the intended marriage ſhould take effect, and ſhe ſhould ſurvive the ſaid *John Grier*, the ſaid *John Grier* did, for his heirs, executors and adminiſtrators, covenant, promiſe, and agree to and with the ſaid *Thomas Groom*, *Thomas Symonds*, and *John Sharpe*, and the ſurvivor of them, that the heirs, executors, and adminiſtrators, of the ſaid *John Grier* would, within three months after the death of the ſaid *John Grier*, well and truly pay, or cauſe to be paid, unto the ſaid *Thomas Groom*, *Thomas Symonds*, and *John Sharpe*, or their executors or adminiſtrators, the ſum of ſix hundred pounds, to be placed out upon ſecurity, in truſt that they, the ſaid *Thomas Groom*, *Thomas Symonds*, and *John Sharpe*, and the ſurvivor of them, and the executors and adminiſtrators of the ſurvivor, ſhould, when they had received the ſaid ſum of ſix hundred pounds, as ſoon as they could conveniently, afterwards place out in their name or names, upon one or more ſecurities, the ſaid ſum of ſix hundred pounds; and from time to time, as they ſhould ſee occaſion, or think proper, call in and receive the ſaid monies, and place the ſame out on other ſecurities, upon truſt that the intereſt and proceed that ſhould ariſe by the ſaid ſix hundred pounds, or any part thereof, received by the ſaid truſtees, ſhould be paid to the ſaid *Ruth Groom*, during her natural life, for her own uſe, or to ſuch perſon or perſons as ſhe ſhould by deed or writing under her hand and ſeal, teſtified by two credible witneſſes, direct or appoint; and after the death of the ſaid *Ruth Groom*, in caſe there ſhould be iſſue of her body, in truſt for ſuch iſſue, in ſuch manner as in the ſaid articles are mentioned; and in default of ſuch iſſue, or in caſe the ſaid *Ruth Groom* ſhould die, leaving iſſue, and all ſuch iſſue ſhould die within age, and without iſſue, and unmarried, then three hundred pounds, part of the ſaid ſix hundred pounds, and all intereſt which ſhould be then due for the ſame, ſhould be paid unto the executors or adminiſtrators of the ſaid

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John Grier; and the three hundred pounds reſidue thereof unto the ſaid *Thomas Groom*, his executors or adminiſtrators.

The marriage between the ſaid *John Grier*, and *Ruth Groom*, ſoon afterwards took effect, and the ſaid *Thomas Groom* paid the ſaid *John Grier* ſuch ſum of ſix hundred pounds.

In the year 1743, a commiſſion of bankruptcy iſſued againſt *John Grier*, and he was found bankrupt; and Mr. *John Grier*, Mr. *Bernard Hillibrand*, and Mr. *John Carelius*, were choſen aſſignees of his eſtate and effects.

And, on the twentieth of *October*, 1744, this matter came on before the lord chancellor, on the petition of the ſaid *Thomas Groom*, *Thomas Symonds* and *John Sharpe*; and in ſuch petition they ſet forth the above-mentioned articles, and that the aſſignees had got out of the bankrupt's eſtate upwards of three hundred pounds, and had made a dividend of ten ſhillings in the pound, and that ſince ſuch dividend was ſo made, the ſaid *John Grier* had died inteſtate and without iſſue, leaving the ſaid *Ruth*, his widow, who had taken out letters of adminiſtration to him.

That the aſſignees had alſo recovered other monies, from the bankrupt's eſtate, in order to make a ſecond dividend; but inſiſted, that the petitioners were not entitled to be admitted, as creditors, under the ſaid commiſſion, or to have any dividend made to them, in regard the ſaid ſix hundred pounds was not payable till after the death of the ſaid bankrupt, and there had been no meeting of the ſaid creditors on the ſaid commiſſion, ſince the ſaid *John Grier*'s death.

The truſtees therefore prayed his lordſhip, that they might be admitted creditors under the commiſſion for the ſaid ſix hunhred pounds and intereſt; and, on their being ſo admitted, that the aſſignees might pay them a dividend of ten ſhillings in the pound, in reſpect of the ſaid ſum of ſix hundred

pounds

pounds, as the like dividend had been made to the other creditors, if the money in the aſſignee's hands, or hereafter to be got in, ſhould be ſufficient for that purpoſe: if not, then as far as the ſame would extend, to be laid out in the truſts contained in the ſaid articles, or ſuch thereof as were then exiſting; and, that his lordſhip would make ſuch other order in the premiſes as to his lordſhip ſhould ſeem meet: and on the part of the truſtees it was inſiſted by the council for them, that, though this debt depended on a contingency, yet, that the contingency had happened before a ſecond dividend was made, though ſubſequent to the time of his becoming a bankrupt; and that it now was become an actual debt.

That this was a debt ariſing on a fair conſideration before marriage, and had a judgment been given with this covenant, that the truſtees might have proved the debt before the contingency had happened.

And they cited the caſe on the part of *Caſwell* and *Caſalet* [*See paragraph* 324] and *ex parte Bateman* [*See paragraph* 324] as a caſe in point which was heard before the lord-chancellor *King*; where his lordſhip, upon precedents laid before him on hearing that caſe, was of opinion, that a debt which was not *debitum in præſenti*, and never might be *debitum in futuro*, in regard the wife might die in the huſband's life-time, ſhould not come in for a diſtribution; neither ſhould the money be reſerved in favour of ſuch contingency.

But his lordſhip gave it as his opinion, that though the debt was contingent when the obligor became bankrupt, yet if the contingency happened before the diſtribution was made, then ſuch contingent creditor ſhould come in for his debt: ſo, if ſuch contingency happened before the ſecond dividend made, the creditor ſhould come in for his proportion thereof, though after the firſt dividend.

The caſe likewiſe in the matter of *Anne King* [*See paragraph* 333] was cited, which was heard before

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Lord *Hardwicke* in *January*, 1742; and they therefore inſiſted, as the contingency had happened, and the debt due to the truſtees before the ſecond dividend was made, had been reduced into a certainty, that therefore the truſtees ought to be let in to prove ſuch debts under the commiſſion.

But by the council for the aſſignees, and other creditors, it was inſiſted, that the petitioners were not creditors within the purview and intent of the ſeveral ſtatutes relating to bankrupts.

That this was no debt due at the time of the party's becoming bankrupt; and might never have been ſo, had *Grier* ſurvived his wife without iſſue; and it was to be conſidered what debts were to be paid.

None but what were due at the time of iſſuing the commiſſion, and that the creditors which were ſuppoſed to be defrauded by the ſeveral acts, muſt be creditors at that time.

That by the ſtatutes of 4 and 5 *Ann. cap.* 7, and alſo by the ſtatute of 5 *Geo.* I. and 5 *Geo* II. bankrupts were only diſcharged from all debts due from him, her or them, at the time he, ſhe, or they, became bankrupt, and that if any bankrupt was arreſted for any debt due before ſuch time, as he, ſhe or they became bankrupt, and had obtained his certificate, that by the ſaid acts he might plead in general, that the cauſe of ſuch action or ſuit did accrue, before ſuch time as he or they became bankrupts.

And the caſe of *Tully* and *Sparkes* was cited (*See paragraph* 330.) where an action was brought againſt a bankrupt's executors, who had obtained his certificate, for a bond given by the bankrupt to truſtees, to pay the truſtees four hundred pounds within two months after his death, for the uſe of his wife *Martha Latimer*. And in bar to this action, the bankrupt's executor pleaded his certificate. But the whole court of King's Bench were unanimouſly of opinion, that this bond was not diſcharged by the act of bankruptcy and certificate, and the four hundred

dred pounds was payable at a day after the bankruptcy, *viz.* within two months after the bankrupt's death, and depended upon two contingencies, *viz.* *if Martha married* and *ſurvived him*; and that the plaintiff could not prove ſuch debt within the ſtatute of 7 *Geo.* I. *cap.* 31. and for this reaſon judgment was given by the whole court, that the plaintiff's debt was not barred by the matter contained in the defendant's plea; becauſe it was not within the ſtatute, for the reaſons before mentioned.

They likewiſe cited a matter which came before his lordſhip the 10th of *December*, 1740, where a man gave a bond to his wife's father, before his marriage, to leave his wife three hundred pounds immediately after his death, in caſe ſhe ſurvived her husband: and on the 17th of *September*, 1740, a commiſſion of bankruptcy iſſuing out againſt him, he ſoon afterwards made away with himſelf, before any dividend was made; and thereupon the widow petitioned that the aſſignees might account for what they had received out of the eſtate and effects, and that ſhe might be let in to receive her dividend, in equal degree with the other creditors: and though this was a caſe that greatly deſerved the compaſſion of the court, as his lordſhip was then pleaſed to obſerve; yet for the reaſons there laid down at the bar, he diſmiſſed ſuch petition; but, at the ſame time, recommended it to the parties, to make the unfortunate widow ſome ſatisfaction, which they, it is ſaid, accordingly did.

It was admitted, that if a judgment was given with a defeaſance, or a bond with a penalty for payment of a ſum of money at a certain time, and ſuch penalty had been forfeited, this would have been a debt at law, and proveable under the commiſſion: but this was a debt only reſting in covenant, and that in this caſe there was no forfeiture of a penalty, ſuch depending on a contingency, and was not provided for to be proved by any clauſe in the acts relating to bankrupts; and therefore the truſtees,

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though the contingency had happened before the ſecond dividend was made, yet they had not a right to prove ſuch debt. And that the opinion of the lord chancellor, in the caſe of *Caſwell* and *Caſalet*, was only given *obiter* by his lordſhip, without any determination on that point, nor had any caſe of that kind received the judgment of the court; and a caſe being cited of Mr. *John Wincheſter*, relating to a marriage (*which ſee in the next paragraph*) his lordſhip poſtponed giving his judgment in this caſe till the 22d of *October*, on which day *Wincheſter*'s petition came on.

And upon the coming on of this petition, his lordſhip concurring with the reaſons offered by the council for the creditors and aſſignees, was of opinion, that as this was not a debt that happened at the time of the act of bankruptcy committed, that it could not be proved under this commiſſion, there being no drawing a line between the one and the other; that the caſe of *Tully* and *Sparkes*, and which he had fully conſidered was a clear authority in this point; and that the acts relating to bankrupts had not made a ſufficient proviſion for the relief of ſuch ſort of creditors; and therefore he diſmiſſed the petition. *Dav.* 524. In the matter of *John Grier*.

227. In *July*, 1739, *John Wincheſter*, of *Norfolk-ſtreet*, in the county of *Middleſex*, ſurgeon, married *Elizabeth* the daughter of the ſaid *John Grant*, citizen and ſoap-boiler of *London*, and by indenture, dated the ſecond day of the ſaid month of *July*, made between the ſaid *Wincheſter* of the one part, and the ſaid *John Grant* and *Elizabeth* his daughter of the other part, reciting the intended marriage; and that *Grant* had, before the execution of the ſaid indenture, paid *Wincheſter* five hundred pounds, and by bond, dated the ſame day, had ſecured one thouſand pounds more, to be paid *Wincheſter*, his executors, adminiſtrators, and aſſigns, within twelve months after the death of the ſurvivor of the ſaid *John Grant* and *Barbara* his wife, with intereſt for the ſame in the

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mean time, after the rate of 4 *per cent.* by the year, by equal half-yearly payments, which five hundred pounds, and one thouſand pounds, ſecured to be paid by the ſaid bond, was to be in full of *Wincheſter*'s wife's portion; and which ſhe had agreed to accept of in full for her proportion and ſhare of her father's perſonal eſtate, by the cuſtom of *London*; and in conſideration of ſuch ſums and ſuch bond, and for ſecuring a proviſion to *Wincheſter*'s wife, and the iſſue of the ſaid intended marriage, it was agreed, and *Wincheſter* covenanted with *Grant* and his heirs, that his heirs, executors, or adminiſtrators would, within a month after his death, pay *Grant*, his executors, or adminiſtrators, two thouſand pounds, to be placed out at intereſt, for a proviſion for *Wincheſter*'s wife, and the iſſue of the marriage, as in the ſaid articles are mentioned.

And *Wincheſter* covenanted, that the ſaid one thouſand pounds, ſecured by the ſaid bond, ſhould, when the ſame became due, be placed out at intereſt, for the purpoſes in the ſaid articles mentioned; and that in caſe *Wincheſter* ſhould die before the ſaid thouſand pounds became payable, and his wife ſhould then be alive, that then the intereſt of the ſaid thouſand pounds ſhould be paid to his wife, as part of her proviſion, till the principal became payable.

And it was agreed, that the ſaid ſum of one thouſand pounds, when due, ſhould be put out at intereſt, with the approbation of *Wincheſter* and his wife, if living; and if they were dead, to be placed out in the name of two truſtees, one to be named by *John Grant*, his executors, or adminiſtrators, and the other by *Wincheſter*, his executors, or adminiſtrators; and as to the ſum of two thouſand pounds that was alſo to be placed out in the names of two truſtees, one to be named by *Grant*, his executors or adminiſtrators, and the other by *Wincheſter*, his executors or adminiſtrators; and the whole ſum of three thouſand pounds, after *Wincheſter*'s death, was to be for the

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uſe of the ſaid *Elizabeth*, *Wincheſter*'s wife, during her life, and after the deceaſe of her, as ſurvivor, if there were one or more child or children of the ſaid marriage then living, in truſt to diſtribute the principal ſum of three thouſand pounds amongſt ſuch children, in ſuch parts and proportions as *Wincheſter* and his wife ſhould direct; and for want of ſuch direction, in truſt to pay and divide the ſame between ſuch child or children equally, ſhare and ſhare alike; and if there was no iſſue of the marriage, then in truſt to pay the one thouſand pounds part of the ſaid three thouſand pounds to ſuch perſon as *Wincheſter* ſhould appoint; and for want of ſuch appointment, to *Wincheſter*, his heirs, executors, or adminiſtrators.

And *Grant*, as is above recited, by a bond, dated the 2d of *July*, 1739, did become bound to pay to *Wincheſter*, his executors or adminiſtrators, one thouſand pounds within twelve months after the death of the ſurvivor of the ſaid *John Grant* and *Barbara* his wife, together with intereſt in the mean time, for ſuch ſum of one thouſand pounds from the date of the bond, after the rate of 4 *per cent. per ann.* payable half-yearly, on *Chriſtmas* and *Midſummer* days.

Grant paid the half-yearly intereſt of 4 *per cent.* home to *Chriſtmas*, 1743, but not upon the exact days of *Chriſtmas* and *Midſummer*, as was reſerved in the bond.

In *April*, 1744, a commiſſion of bankruptcy iſſued againſt *Grant*, and he was found bankrupt; and *Robert Bennet* and *Robert Alſop*, eſqrs. were choſen aſſignees of his eſtate; and *Wincheſter* applied to the commiſſioners to be admitted creditor for ſuch ſum of one thouſand pounds; but the commiſſioners referred him to the lord chancellor for his lordſhip's directions.

And on the 21ſt of *July*, 1744, *Wincheſter* preferred his petition, and prayed that he might be admitted a creditor for the ſaid principal ſum of one thouſand

ſand pounds, and that the dividends thereof might be laid out in *South-Sea* annuities, for the benefit of him, and his wife and children; and that the intereſt might, from time to time, as the ſame became due, be paid to him; and that he might be admitted a creditor for twenty pounds, for half a year's intereſt due on the ſaid bond on *Midſummer* day then laſt; and that the dividends might be paid to him; or that his lordſhip would make ſuch other order as to him ſhall ſeem meet.

In *Auguſt* this petition came on to be heard before his lordſhip, and the council for the petitioner *Winchester* inſiſting, that the ſeveral payments of intereſt which had been made, were not made on the days on which the ſame became due; and that the penalty of the bond had thereby become forfeited; it was ordered to ſtand over, that *Winchester* might verify that fact by affidavit.

On the 18th of *October*, 1744, *Winchester*, by his affidavit, ſwore, that the ſeveral payments of intereſt, which were reſerved and made payable at *Chriſtmas* and *Midſummer*, were not paid on thoſe days, but ſome time afterwards; and he ſet out the particular days, to the beſt of his knowledge, on which ſome of the payments were made; and the laſt payment of intereſt, which was due on the 25th of *December*, was paid the 10th of *January* following.

On the 22d of *October*, 1744, this petition came on to be heard before his lordſhip, and was learnedly argued by council on both ſides; and by the council for the petitioner it was inſiſted, that in this caſe there was a principal ſum to be paid in all events, and that it did not depend upon a contingency, death being certain to all; and that in lieu of the principal, intereſt was to be paid, which ſubſtantiated the debt; and though there was no breach, with reſpect to the payment of the principal ſum, the time of payment not being yet come; yet the non-payment of the intereſt at the days and times mentioned in the bond, was a breach of the condition; that there was a ma-

terial difference between a covenant, or bond which depended upon a contingency, and where there was a forfeiture of a penalty; that this was a debt due by law, and was a ſufficient foundation to intitle *Winchester* to prove his debt under the commiſſion.

But by the council for the aſſignees it was inſiſted, that no recovery could have been had upon this bond; and that though the intereſt had not been paid at the preciſe time, yet it had been paid ſome ſhort time after; and then cited to his lordſhip the clauſe in ſtat. 4 and 5 *Ann.* for the amendment of the law, which is as follows: 'And be it enacted, that 'from and after the ſaid firſt day of *Trinity* term, 'when any action of debt ſhall be brought upon a 'ſingle bill, or where an action, or *ſcire facias*, ſhall 'be brought upon any judgment; if the defendant 'hath paid the money due on ſuch bill or judgment, 'ſuch payment ſhall and may be pleaded in bar of 'ſuch action or ſuit; and where an action of debt is 'brought upon any bond, with a condition or de-'feaſance to make void the ſame, on payment of a 'leſſer ſum at a day or place certain, if the obligor, 'his heirs, executors, or adminiſtrators have, before 'the action brought, paid the obligee, his executors, 'or adminiſtrators, *the principal and intereſt due by the 'defeaſance or condition of ſuch bond*, though ſuch pay-'ment was not made ſtrictly according to the de-'feaſance, yet it ſhall and may nevertheleſs be plead-'ed in bar to ſuch action, and ſhall be as effectual 'in bar thereof, as if the money had been paid at 'the day and place, according to the condition or 'defeaſance, and had been ſo pleaded.

'And be it further enacted by the authority afore-'ſaid, that if at any time, pending an action upon any 'ſuch bond, with penalty, the defendant ſhall bring 'into the court, where the action ſhall be depending, 'all the principal money and intereſt due on ſuch 'bond, and alſo all ſuch coſts as have been expended 'in any ſuit or ſuits at law or equity upon ſuch bond; 'the ſaid money ſo brought in ſhall be deemed and

'taken

'taken to be in full ſatisfaction and diſcharge of the 'ſaid bond; and the court ſhall and may give judg-'ment to diſcharge every ſuch debt of and from the 'ſame accordingly.'

That in this caſe intereſt had been actually paid, though not paid at the preciſe time; that the party had accepted it; and that by virtue of the clauſe abovementioned, *Grant*, had an action been brought againſt him by *Winchester*, might have pleaded the payment of ſuch intereſt in bar of ſuch action; and his lordſhip, upon full conſideration of theſe caſes, made the following obſervations.

There are ſeveral caſes of this kind; the firſt is, where a bond is given by a huſband to pay a ſum of money in his life time to truſtees, to be laid out in truſt for himſelf and his wife, or children; and in caſe the huſband ſurvives, to the uſe of himſelf; if in this caſe the huſband becomes a bankrupt, this being a debt due in his life time, and before the bankruptcy, the court will let in the truſtees to prove ſuch debt, according to the truſts.

The ſecond is, where a perſon gives a covenant to pay to truſtees a ſum of money for the benefit of the wife or children after his death, and alſo a judg-ment, by way of collateral ſecurity to ſuch covenant, and afterwards becomes bankrupt; this being a debt at law, the court will permit the ſame to be proved under the commiſſion, according to the right inveſted in them.

The third is the preſent caſe of *John Winchester*, where the father gives a bond to his intended ſon-in-law, on the marriage of his daughter, to pay a ſum of money after his death, and intereſt in the mean time, on particular days and times; and there is a breach of the conditions of the bond, and the father becomes bankrupt: this is a legal debt, not depending on a contingency, whether it is or is not to be paid; and in this caſe there was a breach of the condition, the intereſt not being paid on the days

mentioned in the bond, but ſome days afterwards.

That before the ſtatute of 4 and 5 *Ann.* for the amendment of the law, this was a breach of the penalty, and that the clauſe in that ſtatute extended to the payment of the principal and intereſt of a leſſer ſum at a day and place certain; but that theſe ſorts of bonds were not within the view and intent of that act; this debt, though certain in its nature, being to be paid at an uncertain time, *viz.* on the death of *Grant* and his wife.

The fourth is *Ruth Groom*'s caſe, where a man covenants, in conſideration of a marriage portion paid him, for his heirs, executors, and adminiſtrators to pay to truſtees a ſum of money after his deceaſe, *in caſe his wife ſurvives him.*

This caſe depending upon a contingency, whether it ever may or may not happen, becauſe the huſband may ſurvive the wife, and may have no iſſue, is materially different from the other caſes; becauſe in the other caſes there was a remedy at law before the commiſſion iſſued; but in *Groom*'s caſe there was no debt due at the time of the iſſuing the commiſſion.

And for theſe and other reaſons given by his lordſhip, he was pleaſed to make the following order. *viz.*

That the petitioner be at liberty to go before the major part of the commiſſioners named in the ſaid commiſſion, to prove his debt of one thouſand pounds in the ſaid petition named; and that he be admitted a creditor under the ſaid commiſſion, for what he ſhall ſo prove, and be paid out of the ſaid bankrupt's eſtate now remaining in, or which ſhall hereafter come to the hands of the aſſignees under the ſaid commiſſion, a dividend or dividends in reſpect thereof, ratably and in equal proportion with the ſeveral other creditors of the ſaid bankrupt, ſeeking relief under the ſaid commiſſion. On the petition

petition of *John Winchester*, in the matter of *John Grant* a bankrupt. *Dav.* 530.

228. Trover and converſion of money, as aſſignee of the commiſſioners of bankruptcy of *Forth* the bankrupt, in the evidence on the trial at the bar, the caſe appeared to be thus. Two creditors, joint brewers, one became a bankrupt; the whole debt is aſſigned over: reſolved that debt would have lain, and the aſſignee ſhould have recovered a moiety; for one moiety only did paſs by the aſſignment. But as in this caſe the money was received as the joint traders money, here the aſſignee cannot bring trover for the whole; becauſe he lays by that, the ſole property in himſelf, which was not ſo. And an aſſignee can only have ſuch action as the bankrupt himſelf might have had.

Per North, C. J. If there are accounts between two merchants, and one of them becomes a bankrupt, the courſe is not to make the other, who, perhaps, upon ſtating the accounts, is found indebted to the bankrupt, to pay the whole that originally was intruſted to him, and to put him, for the recovery of what the bankrupt owes him, into the ſame condition with the reſt of the creditors, but to make him pay that only which appears due to the bankrupt on the foot of the account; otherwiſe it will be for accounts between them, after the time of the other's becoming a bankrupt, if any ſuch were. 2 *Show.* 103. *Eaſt.* 32. *Car.* II. *Lut.* 85, 219, 135. *Ruſhworth* v. *Hodſon.*

229. If there be ſeveral joint partners, and one has dealings generally with one of them, in matters concerning their joint trade, whereby debt is due to him, it ſhall charge them jointly, and the ſurvivors of them: But if in that caſe one had rather deal with one of them, upon his own account, he muſt make his agreement ſpecially; in which caſe, the debt ſhall be only *his* and *his executors*, and ſhall not ſurvive.

If one or more of the joint traders become bankrupt, his or their proportions only are assignable to the commissioners, to be held in common with the rest, who were not bankrupts.

If there be an act of bankruptcy committed, and a creditor obtains judgment subsequent to it, then a commission is taken out; now the judgment is thereby avoided.

If there be several joint traders, payment to one of them is payment to all. So, if they all, except him to whom the payment was made, were bankrupts, the payment is only unavoidable as to his proportion. And if there be four partners, whereof three are bankrupts, and their shares assigned, and a payment is made to him that was no bankrupt, it is a payment to all the assignees, for now they are all partners. Cases in *K. B.* 446. 13 *W.* III. At *nisi prius*, before *Holt*.

230. *Pawlin* and *Loggin* became partners in some forges and iron mills; and *Pawlin* alledging that *Loggin* had not brought his proportion of stock in trade, and had wasted the joint stock, brought a bill against him to be relieved. The matter by consent was referred to Mr. *John Trinder*, who, in regard *Loggin* had not brought in his first stock, and had wasted the joint stock, *Jan.* 30, 1685, awarded *Loggin* to deliver to *Pawlin* what remained of the joint stock, and the lease of the iron mills, *&c.* to be by him enjoyed to his own use, and general releases to be given; which award, after exceptions taken to it, was afterwards confirmed, and decreed by the court. *Loggin* was afterwards found a bankrupt, and the plaintiff *Whitacre*, as being a creditor to him by bond, had an assignment made to him by the commissioners, and brought a bill to have an account of *Loggin*'s estate that came to the hands of *Pawlin*, and alledged, that if any such award was made, it was after such time as *Loggin* became a bankrupt. *Per Curiam.* there appearing no fraud in the obtaining

ing of the award; but the ſame being in an adverſary cauſe, and the award after excepted to, &c. although *Loggin* might be then a bankrupt; yet not being known ſo to be at the time of the award, ſuch award ought to ſtand. 2 *Vern.* 1691. *Whitacre* v. *Pawlin.*

231. *Richardſon* ſenior, and *Richardſon* junior, and one *Gonſon*, were partners in the trade of a dry ſalter. *Gonſon* embezzles the joint ſtock, contracts private debts, and becomes a bankrupt: the commiſſioners aſſign the goods in partnerſhip; bill by the plaintiff for an account, and to have the goods ſold to the beſt advantage, and inſiſted, that out of the produce of the goods, the debts owing by the joint trade ought to be paid in the firſt place, and that out of *Gonſon*'s ſhare, ſatisfaction muſt be made for what *Gonſon* had waſted; and that the aſſignees could be in no better a caſe than the bankrupt, and were intitled only to what this third part would amount unto, clear, after debts paid, and deductions for his embezzlement; and the court ſeemed to be of that opinion; but ſent it to a maſter to take the account, and ſtate the caſe. 2 *Vern.* 129. *Trin.* 1693. *Richardſon* v. *Goodwin*, and others.

232. *A* and *B* being joint traders, a commiſſion of bankruptcy iſſued againſt them; their ſeparate creditors applied by petition, that they might be let in for their debts upon the ſeveral reſpective eſtates of the bankrupts under that joint commiſſion, the ſeparate eſtates being of ſmall value, and would not bear the charge of taking out two new commiſſions againſt them reſpectively.

The lord chancellor ordered them to be let in to prove their ſeparate debts upon the joint commiſſion, they paying contribution to the charge of it; and directed, that as the joint or partnerſhip eſtate was firſt to be applied to pay the partnerſhip debts; and as ſeparate creditors are not to be let in upon the joint eſtate, until all the joint debts are firſt paid; ſo likewiſe the creditors for the partnerſhip

ſhall not come in for any deficiency of the joint eſtate upon the ſeparate eſtate, until the ſeparate debts are firſt paid. 1 *Vern.* 706. *Mich.* 1715. *ex parte Crowder.*

233. Two joint traders became bankrupts, and a joint commiſſion of bankruptcy is taken out againſt them. The commiſſioners make an aſſignment of the real and perſonal eſtate of the two bankrupts, or either of them; and the commiſſioners aſſign over the ſeparate effects and eſtate to other aſſignees; and now the aſſignees under the ſeparate commiſſioners applied by petition to the court, that they might be at liberty to ſue at law for the ſeparate eſtate.

Lord chancellor. The aſſignment made by the commiſſioners, upon the joint commiſſion, paſſes as well the ſeparate as the joint eſtate of the two partners, the bankrupts; the aſſignees, on the ſeparate commiſſions, can make nothing of their action at law. I will not ſuffer them to ſpend the eſtate in vexatious ſuits there; but if they will join in a bill in equity for an account of the ſeparate eſtate, I will not hinder them.

It is ſettled, and is a reſolution of convenience, that the joint creditors ſhall be firſt paid out of the partnerſhip or joint eſtate, and the ſeparate creditors out of the ſeparate eſtate of each partner; and if any ſurplus of the joint eſtate, beſides what will pay the joint creditors, it ſhall be applied to pay the ſeparate creditors; and if a ſurplus of the ſeparate eſtate, beyond what will ſatisfy the ſeparate creditors, it ſhall go to ſupply the deficiency that may remain as to the joint creditors. But for the eaſe of both parties, let it be referred to a commiſſioner in each commiſſion, to take an account of the whole partnerſhip effects, and the ſeparate eſtates and effects of each of the partners; and if the commiſſioners find any thing difficult, they are to ſtate it ſpecially; and, with regard to the ſurplus of the partnerſhip effects, beyond what will pay the partnerſhip debts; and the ſurplus of the ſeparate effects, beyond what will

will pay the ſeparate debts, each ſide to apply to the court for ſuch ſurpluſſes. 2 *P. Will.* 500. *Mich.* 1728. *ex parte Cooke.*

234. If there are two joint traders, and one of them becomes a bankrupt,

Per Holt, C. J. the commiſſioners cannot meddle with the intereſt of the other; for it is not affected by the bankruptcy of his companion. 2 *Salk.* 59, 61. *Eaſt.* 7 *W.* III. *Anon.*

235. The bill ſets forth, that the defendant, *George Widdows*, being indebted to the plaintiffs, became bound to them in ſeveral bonds; and the ſaid *Widdows* and the defendant *Berman*, for ſeveral years paſt, were copartners; and *Widdows*, by articles of copartnerſhip, was intitled to two thirds of the whole ſtock, and the defendant *Berman* to one third part: the ſaid *Widdows* and *Berman*, on the 25th of *Auguſt* laſt, became bankrupts; and a commiſſion of bankruptcy was awarded againſt them; the commiſſioners of bankrupts aſſigned all the eſtate of the ſaid bankrupts to the defendant *Knight* and others, and refuſe to let the plaintiffs, creditors of the bankrupts, come in, and intend to divide the eſtate amongſt the joint creditors of both bankrupts, by reaſon whereof the plaintiff's debts will be utterly loſt,

The defendants inſiſt, that it was agreed by indentures of copartnerſhip, that all ſuch debts as ſhall be owing on the joint account, ſhould be paid out of the joint ſtock; and at the end of the partnerſhip, each copartner take and receive, to their own uſe, his ſhare of the joint ſtock; and that the joint ſtock or trade ſhould not be charged with the private or particular debts of either of the partners; but that each ſhould pay their ſaid private debts out of their particular eſtates, not included in the joint ſtock; that if both of the ſaid parties ſhould be living at the end of the firſt three years of the ſix years, that the ſaid *Berman* ſhould come in joint partner accordingly;

cordingly; and during the ſaid joint trade, the co-partners became jointly indebted to the other defendants, *Knight*, &c. in ſix thouſand pounds; and that *Widdows* became indebted to the plaintiffs, as aforeſaid, without the conſent of *Berman*; and the money due upon the ſaid bonds was not brought into the account of the joint ſtock; and the ſaid *Widdows* was only a ſurety, and received none of the money. And the defendants inſiſted, that the joint creditors ought to be firſt paid out of the eſtate of partnerſhip; and that the commiſſioners have no power to grant the joint eſtate to pay the plaintiffs, they being ſeparate creditors of *Widdows*. And if a ſurplus of the joint eſtate, after the joint creditors paid, then the plaintiffs can have but a joint moiety of ſuch ſurplus towards their ſatisfaction, the ſaid *Berman*'s moiety not being liable to pay the ſaid *Widdows*'s ſeparate debts; and the debts then claimed were the proper debts of the ſaid *Widdows*; and yet, after all the joint debts are paid, there will be an overplus, ſo that thereby the ſaid *Berman* will be diſcharged, and have money paid unto him. But if the plaintiff, and other ſeparate creditors of *Widdows*, be admitted to the joint eſtate, there will not be ſufficient to pay the joint creditors; ſo that thereby not only *Berman*'s eſtate will be applied to pay *Widdows*'s debts, but will be liable to the joint creditors. But there can be no diviſion of the joint eſtate, whereby to charge any part thereof with the private debts of either party; and till the joint debts are paid, and till diviſion can be made of the ſurplus, both parties are alike intereſted in every part of the ſaid joint ſtock; that the commiſſioners have no power, by the commiſſion, to adminiſter an oath to the plaintiffs for proof of their debts, they claiming debts from the ſaid *Widdows* only, and the commiſſion is againſt *Widdows* and *Berman* jointly, and not ſeverally, and therefore cannot admit the plaintiffs creditors.

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The court declared, that the eſtate belonging to the joint trade, as alſo the debts due from the ſame, ought to be divided into moieties, and that each moiety of the eſtate ought to be charged in the firſt place, with a moiety of the ſaid joint debts; and if there be enough to pay all the debts belonging to the joint trade, with an overplus, then ſuch overplus ought to be applied to pay the particular debts of each partner; but if ſufficient ſhall not appear to pay all the joint debts, and if either of the ſaid partners ſhall pay more than a moiety of the ſaid debts, then ſuch partner is to come in before the ſaid commiſſioners, and be admitted as a creditor for what he ſhall ſo pay over and above the moiety: and it was ſo decreed accordingly. *Chan. Rep. Eaſt.* 25 *Car.* II. *Widdows and Berman*, v. *Craven, and others, and Knight.*

236. The bill ſet forth, that in *November*, 1725, the plaintiffs, and one *John Gromvegan*, and *Nicholas Prevoſt*, then of *London*, bookſeller, became partners in bookſelling.

The plaintiffs, and *Gromvegan* and *Prevoſt*, all being at *Holland*, did, according to the cuſtom of *Holland*, appear before a notary, and execute articles of copartnerſhip, and jointly and ſeparately declared, that each had advanced twenty-four thouſand ſix hundred *guilders*, total ninety-eight thouſand, four hundred *guilders*; which ſum was to pay all the debts they had then contracted, as mentioned in the inventory. But no debts ſhould be paid, not mentioned in the inventory; nor any debts, which any of the copartners might contract on their own private account.

That a ſum agreed on between them ſhould be allowed for maintenance; and that all loſs and gain ſhould be equally ſhared and borne, with other uſual covenants.

The copartnerſhip was carried on until the 12th of *May*, 1728, when *Gromvegan* quitted, and for

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one thouſand, two hundred, twenty-ſeven pounds, five ſhillings, and four pence, releaſed his claim to plaintiffs and *Prevoſt*; and then the articles were carried on between the reſt, on the firſt foot; and then *Prevoſt* was intruſted with the goods in ſhop and warehouſe.

But he became profuſe, and embezzled the copartnerſhip ſtock, and applied the ſame to his own uſe, and ſuffered the partnerſhip debts to be unpaid; and having contracted private debts on his own account, became a bankrupt, and a ſeparate commiſſion was taken out againſt him, the 30th of *November*, 1733; that the meſſenger having taken poſſeſſion of the partnerſhip goods, and the commiſſioners having executed an aſſignment to defendants, they have taken poſſeſſion of the partnerſhip goods and books, and have received ſeveral of the partnerſhip debts, and are getting in the reſt, and threaten to apply the partnerſhip goods to pay the ſeparate creditors; whereas the goods are copartnerſhip goods, and ought to be applied to pay the copartnerſhip debts, and to make the plaintiffs ſatisfaction for what *Prevoſt* had embezzled to his own ſeparate uſe; and the reſidue to be divided into equal parts, two thirds to the plaintiffs, and one third to *Prevoſt*, to which third he is intitled, and is to be part of his ſeparate eſtate; and this was the prayer of the bill; and that the defendants may be reſtrained from ſelling any part, without the plaintiffs concurrence.

The aſſignees admit the bill, and the articles, that they have taken poſſeſſion, and ſold ſome of the ſtock, with conſent of the plaintiffs, and have ſet forth an account, in the ſchedule to their anſwer, of the ſtocks amounting to ſix thouſand five hundred pounds, and ſubmitted to apply the eſtate as the court ſhall direct; and his lordſhip was pleaſed to decree as follows:

Firſt, That it ſhould be referred to Mr. *Lightboun* to take an account of the partnerſhip debts received by the plaintiffs in *Holland*.

Secondly,

Secondly, To take an account of the partnerſhip eſtate in *England*, received by the aſſignees, or any for their uſe.

Thirdly, To take an account of the partnerſhip debts owing by *Prevoſt* and the plaintiffs.

Fourthly, To cauſe an advertiſement to be printed for the joint creditors of *Prevoſt* and the plaintiffs to come in and prove their debts.

Fifthly, To take an account what embezzlements *Prevoſt* has made of the copartnerſhip eſtate; and in taking accounts, plaintiffs and defendants to be examined on oath, to produce all books, *&c.* and to have all juſt allowances.

Sixthly, That what the maſter ſhall certify the copartnerſhip debts ſhall amount to, ſhall, in the firſt place, be paid by the plaintiffs and defendants to the joint creditors, in proportion to their debts, and as far as the copartnerſhip eſtate in their hands will extend.

Seventhly, That if it ſhall appear any of the partnerſhip eſtate remains in the plaintiffs and defendants hands, after the partnerſhip debts are paid, then the maſter to divide the ſame into three parts.

Eighthly, And the plaintiffs are to take up two thirds, and out of *Prevoſt*'s third part, they are to take what it ſhall appear *Prevoſt* has embezzled of the partnerſhip eſtate.

Ninthly, And if there ſhall be any reſidue of *Prevoſt*'s third part, after the partnerſhip debts and the embezzlements of *Prevoſt* are ſatisfied, then the ſame is to be paid or retained by the aſſignees for the benefit of *Prevoſt*'s ſeparate creditors.

Tenthly, The maſter may ſtate any thing ſpecially; and all parties are to be paid their coſts of this ſuit out of the copartnerſhip eſtate, to be taxed by the maſter. *Caſes, Lord Talbot*, 28 *March*, 1734. *Goſs and Neaulme* v. *Dufreſnay*, *Rouſe*, and *Mallair*, aſſignees of *Prevoſt*.

237. On the 11th of *September*, 1742, a joint commiſſion iſſued againſt *Peter Powel* and *Peter Powel*

Powel the younger, of *Exon*, leatherſellers and merchants; and *William Stabback*, and *John Buſſell* were choſen aſſignees of his eſtate and effects; and the commiſſioners executed an aſſignment to them of their eſtate and effects. The aſſignees, by virtue of ſuch aſſignment, poſſeſſed themſelves of all the joint and ſeparate eſtate of the bankrupts.

And this matter came before the lord chancellor on the petition of *Thomas Roberts*, a creditor of the ſeparate eſtates of *Peter Powel* and *Peter Powel* the younger, and of *Thomas Lavington*, a ſeparate creditor of the ſaid *Peter Powel* the younger, on behalf of themſelves, and all the ſeparate creditors of the ſaid *Peter Powel*, and *Peter Powel* the younger.

And the petition ſet forth, that, before the date of the commiſſion, *Peter Powel* the elder owed *Roberts* fifty pounds by bond, and twenty-nine pounds four ſhillings for goods ſold, *&c.* on his ſeparate account; and that *Peter Powel* the younger alſo owed *Roberts* thirty-ſix pounds for goods ſold and delivered on his ſeparate account: and that *Peter Powel* the younger owed *Lavington* ſeventy pounds on his ſeparate account, by two promiſſory notes, which were then due.

That they had applied to the commiſſioners, to be admitted creditors; which they rejected to do, inſiſting it was a joint commiſſion; and they therefore prayed, that they and the ſeparate creditors might come in and prove their debts under the joint commiſſion; and that the commiſſioners might take joint and ſeparate accounts of the joint and ſeparate eſtates; and that what ſhould be found on ſuch accounts to belong to the ſeparate eſtates, might be applied by the aſſignees towards ſatisfaction of the reſpective ſeparate creditors; and that the petitioners might be paid their coſts of the application by the aſſignees.

Upon which petition his lordſhip ordered as follows:

Firſt,

Firſt, Let the major part of the commiſſioners in the commiſſion, give notice in the the *London Gazette*, appointing a time and place when and where the ſeparate creditors of each of the bankrupts are to be at liberty to prove thoſe debts under the joint commiſſion.

Secondly, Let the commiſſioners take ſeparate accounts of the joint and reſpective ſeparate eſtate of the bankrupts come to the aſſignees hands, or of any others by their order, or for their uſe, diſtinguiſhing the joint and ſeparate eſtate of *Peter Powel*, as alſo the joint and ſeparate eſtate of *Peter Powel* the younger, from each other.

Thirdly, That what on ſuch account ſhall belong to the bankrupt's joint eſtate, ſhall be applied by the aſſignees towards ſatisfaction of the joint creditors, and in caſe there ſhall be any ſurplus of the joint eſtate, after all the joint creditors ſhall be paid their whole demands, then the moiety of the ſurplus is to be carried to the account of the ſeparate eſtate, and to be applied to ſatisfy the ſeparate creditors reſpectively.

Fourthly, And if there is any ſurplus of the ſeparate eſtates, after all the ſeparate creditors ſhall be paid their whole demands, then ſuch ſurplus of the ſeparate eſtates, or of either of them, is to be carried to the account of the joint eſtate, and to be applied towards ſatisfaction of the joint creditors: and let the reſpective ſeparate eſtates bear a proportionable part of the charge of ſuing out the commiſſion and executing it, to be appointed by the commiſſioners; and let the coſts of this application be paid to the petitioners by the aſſignees out of the bankrupt's ſeparate eſtate; and let it be referred to Mr. *Bennet* to tax the coſts, if the parties cannot agree. *Dav.* 373. *In the matter of* Peter Powel *and* Peter Powel *the younger*, *bankrupts*. 22 *Dec.* 1743, beore Lord *Hardwicke*.

238. Sir *William Scroggs* prayed a new trial in *Middleſex*, in trover, againſt a bankrupt, becauſe a verdict was *pro* defendant on a copartnerſhip alledged

ledged in the bankrupt *Shirley*, to prevent deſtruction of trade; which was ſworn, and, the chief juſtice being dead, the court granted a new trial, becauſe for a moiety it is clear for the plaintiff, and the action of *Trover* well lies by the aſſignee of one partner, a bankrupt, againſt the other, which was ruled at the trial, and agreed now. 2 *Keb.* 750. 23 *Car.* II, *Thomas* v. *Day*.

239. On the 2d of *Feb.* 1742, a ſeparate commiſſion of bankruptcy was taken out againſt *William Criſpe*, by *William Perritt*, plaiſterer. *Criſpe* was a partner with *Edward Barnaby*, eſquire, and Captain *Barbutt*, in the undertaking of the building of *Ranelagh* amphitheatre, for the entertainment of the public; and this debt, which amounted to the ſum of four hundred and twenty-ſix pounds, or thereabouts, was part of a ſum of money due to *Peritt*, for plaiſterer's work done in and about ſuch amphitheatre.

Criſpe petitioned the lord-chancellor to ſuperſede the commiſſion, inſiſting that this was a joint debt, and that he did not owe *Perritt* any thing on his ſeparate account: and on the eighteenth of *February*, 1742, this petition was heard before his lordſhip; and on hearing counſel on both ſides, and it not then appearing to his lordſhip, whether *Criſpe* was or was not a bankrupt, his lordſhip did order the commiſſioners to execute a provincial aſſignment, and did direct an iſſue to be tried in an action of *Trover* before the lord chief juſtice *Willes*, in *London*, wherein the ſaid *William Criſpe* was to be plaintiff; and ſuch aſſignee was to be defendant; and in which the point of bankruptcy would come in queſtion.

On the ninth of *June*, 1743, the cauſe was tried at the ſittings in *London*; and by a ſpecial jury between the ſaid *William Criſpe*, plaintiff, and the ſaid *William Perrit*, who was choſen proviſional aſſignee, defendant.

And the iſſuing of the commiſſion, the joint-debt of *Perritt*, the aſſignment, and an act of bankruptcy com-

committed by *Criſpe*, were proved; and after his lordſhip had clearly and fully ſummed up the evidence to the jury, it appearing to them to be a joint debt, they were pleaſed to give a verdict for the plaintiff *Criſpe*, with ten pounds damages, and forty ſhillings coſts: and did not find him bankrupt for this debt: but a point of law ariſing, the laſt clauſe of the act made in the tenth year of Queen *Anne*, concerning bankrupts, was read, and is as follows:

'And whereas a doubt has ariſen upon an act made 'in the fourth year of her majeſty's reign, entitled, '*An act to prevent frauds frequently committed by 'bankrupts*, whether the diſcharge of a bankrupt, by 'virtue of that act, ſhould be conſtrued to diſcharge the partners of ſuch bankrupt from the ſame 'debt; be it therefore further enacted and declared, 'by the authority aforeſaid, that, by the diſcharge 'of any bankrupt or bankrupts, by force of the ſaid 'act, or any other acts relating to bankrupts, from 'him, her, or them, due and owing, at the time 'that he, ſhe, or they, became bankrupt, ſhall not 'be conſtrued, nor was meant, or intended, to releaſe or diſcharge any other perſon or perſons, who 'was or were partner or partners with the ſaid bankrupt in trade, at the time he, ſhe, or they, became bankrupt, or then ſtood jointly bound, or 'had made any joint-contract, together with ſuch 'bankrupt or bankrupts, for the ſame debt or 'debts from which he was diſcharged, as aforeſaid, 'but that, notwithſtanding ſuch diſcharge, ſuch 'partner, or partners, joint obligor, or obligors, and 'joint contractors, with ſuch bankrupt and bankrupts, ſhall be and ſtand chargeable with, and liable to pay, ſuch debt and debts, and to perform 'ſuch contracts, as if the ſaid bankrupt and bankrupts had never been diſcharged from the ſame.'

And the following caſe was drawn up, and approved of by the lord chief juſtice, for the opinion of the court of Common Pleas.

William Criſpe, and *William Perritt*, in *Trover.*

The plaintiff brought this action againſt the defendant for a trover and converſion of the goods mentioned in the declaration in this cauſe, whereunto the defendant pleaded the general iſſue: and at the trial before the right honourable the lord chief juſtice *Willes*, on *Thurſday*, the 9th of *June*, 1743, at *Guild-hall*, *London*, it was admitted that the goods mentioned in the declaration were originally the goods of the plaintiff, and that the ſame goods had been taken and converted by the defendant at ſome time ſubſequent to the ſecond day of *February*, 1742: but the defendant inſiſted, that he had a right to take and convert the goods, by virtue of a commiſſion of bankruptcy iſſued againſt the plaintiff, upon the petition of the defendant, upon the ſecond day of *February*; under which commiſſion an aſſignment had been duly made of the ſame goods to the defendant, by the acting commiſſioners in the ſaid commiſſion named; and the plaintiff admitting the iſſuing of the ſaid commiſſion at the time and in the manner aforeſaid, and the aſſignment likewiſe to have been made to the defendant as before mentioned.; it was proved that the ſaid plaintiff, before and at the time of iſſuing the ſaid commiſſion, was a trader, within the intent of the ſeveral ſtatutes againſt bankrupts now in force; and that the ſaid plaintiff, being a trader, as aforeſaid, before the iſſuing of the ſaid commiſſion, did commit an act of bankruptcy; and that before the iſſuing of the commiſſion, the plaintiff jointly, and in partnerſhip with two other perſons, did contract a debt to the defendant of four hundred, twenty-ſix pounds, and four pence farthing; and that the ſame debt was due and owing to the ſaid defendant at the time of the iſſuing of the ſaid commiſſion from the ſaid plaintiff and his ſaid two partners; but no other debt was then owing by the plaintiff to the defendant; nor had either of the two other partners committed any act of bankruptcy. The queſtion is,

Whether,

Whether, upon this caſe, the plaintiff is entitled to maintain this action?

And the principal queſtion in this caſe was, Whether a ſeparate commiſſion of bankruptcy could be taken out for a joint debt? And this matter was learnedly argued, firſt, by Mr. Serjeant *Willes*, for the plaintiff; and by Mr. Serjeant *Prime* for the defendant, *Perritt*; and afterwards by Mr. Serjeant *Skinner*, and Mr. Serjeant *Wynne*.

Mr. Serjeant *Willes* obſerved, that he apprehended he was now treading in an unbeaten way; and that this caſe had never yet received a determination; and that, according to the Lord *Coke*'s obſervation, a thing that never had been done, ought not to be done: that in order to ground a commiſſion, it muſt be ſuch a debt as the party could maintain an action upon; and that no ſeparate action could be brought for a joint debt; and whenever a plaintiff brought ſuch action, he was nonſuited; that the very bond that was given to the lord chancellor, was to prove the party a bankrupt as well before the commiſſioners as upon a trial at law, in caſe the due iſſuing forth of the commiſſion was conteſted and tried.

That, as this debt could not charge him ſeparately in law, ſo neither could it charge him in equity; and that for every right the law had provided an equal remedy; and he cited the caſe of *Maſter* againſt *Winter* and *Lawrence*, tried before Lord *Hardwicke*, where a commiſſion was adjudged to be irregularly taken out by a husband for a debt due to his wife, as executrix, and which ſhe claimed in *auter droit*.

That it might ſo happen, that one perſon in copartnerſhip might be obliged to abſcond for his ſeparate debts, and yet the copartnerſhip be in a flouriſhing condition; and that, in the preſent caſe, there did not appear any danger of the defendant, *Peritt*'s, loſing his debt; and that ſuch commiſſions, as he

apprehended, had never been taken out; nor did he conceive the defendant, *Perritt*, had a right to do the ſame.

Mr. Serjeant *Prime*. The petition for every commiſſion only ſets out, that he is a creditor in general, and that, in his opinion, a commiſſion of bankruptcy was equal to an execution, and if a view was to be taken of the ſtatutes, it would there be ſeen; and that there was no difference; and as to the common law, that was ſilent with regard to bankrupts.

That by the ſtatute of 34 *H.* VIII. and which was not repealed, the purview was general; and that every creditor was entitled to relief, rate and rate alike; and whether it was a ſeparate or a joint property, it was the ſame; and that any creditor entitled to relief might ſue out a commiſſion.

That as to the rule of law, it was alſo the ſame, for that joint debtors were debtors for the whole; and though a joint action might be brought for a joint debt, yet the party might iſſue out execution againſt, and levy the whole upon any one of them. That a payment or a releaſe to one, was a releaſe or payment to all; that, as *Perrit* had a right to levy the whole in an execution, therefore he was to be conſidered as a creditor for the whole four hundred and twenty-ſix pounds; and ſuppoſing the whole debt of four hundred and twenty-ſix pounds to be divided into three parts, there would be then one hundred and forty-two pounds due to *Perritt* from *Criſpe*, which was ſufficient to ground the commiſſion.

That the courts of law were *Aſtuti*, and that the laws relating to bankrupts were to be largely and beneficially conſtrued for the benefit of creditors; and as to the caſe of *Winter* againſt *Lawrence*, that did not come up to the preſent caſe; becauſe there was no real debt due to the husband, who was the petitioning creditor; but that here was a juſt debt actually due to *Perritt*; and no injury could be done to

the

the copartnership, becauſe *Criſpe*'s part only would be affected thereby.

And he put this caſe, Suppoſe a gentleman was bound with a trader, and the gentleman went abroad. and afterwards the trader abſconded, and refuſed payment, a commiſſion might be taken againſt the trader only.

And for thoſe and other reaſons he conceived a ſeparate commiſſion might and ought to iſſue againſt *Criſpe*.

On this argument no precedents were produced to ſhew that ſuch commiſſion had iſſued; and the court came to no opinion; Mr. Serjeant *Skinner* and Mr. Serjeant *Wynne* being retained as council to argue the caſe again.

Mr. Serjeant *Skinner*. The queſtion before the court is, Whether a ſeparate commiſſion can be taken out by a joint debtor? And here it is to be conſidered, that *Perritt* could not take out a ſeparate action, or hold *Criſpe* to bail on an arreſt: that it did not appear there had been any inſtances of that kind; and that this was introducing a novelty in the law, but that novelty was no recommendation to it, the law not being like human nature and animals, the worſe for being old. That a commiſſion could not be taken out for a *choſe* in action, and that the whole debt was due from all three of the partners; and it might ſo happen, that the partnerſhip ſtock might be indebted to *Criſpe*, and therefore that it was not reaſonable that the offence of one man ſhould affect the other. And he compared a commiſſion to an action, and not to an execution; and that by the very tenor of the bond which *Perritt* had given to the chancellor on taking out the commiſſion againſt *Criſpe*, it was ſuch a debt as he could not prove on a trial at law; and which the bond ſays, expreſly, he muſt do; and therefore he had forfeited ſuch bond. And he cited the caſe *ex parte Cooke*, 2 *P. Will.* 500. 1 *Mod.* 245. The caſe

of *Kemp* and *Andrews*, 170; the caſe of *Thomas* againſt *Day*, 2 *Keb.* 750; and ſome other caſes: and upon the whole he concluded, that this commiſſion was ill grounded, and ought not to lie.

But this being a caſe which never appeared to have received the determination of a court of law, nor to have been reported in any of the books, therefore no caſe quite parallel to it was cited by any of the gentlemen who ſpoke to it before: nor were there any precedents found out to lay before the court till this ſecond argument came on, which I ſhall take notice of in the argument of Mr. *Wynne*.

Mr. Serjeant *Wynne*. There are two objections which have been taken to this commiſſion.

The firſt is, That an action at law won't lie againſt one partner where the credit is joint.

Secondly, That no ſuch commiſſion was ever ſued out; and that ſhews the general ſenſe of mankind, that no ſuch commiſſion could be ſupported.

But this is no new caſe, for each partner, in conſtruction of law, is a debtor for the whole and every part; and *Perritt* was a creditor of all three in a joint capacity, and a creditor of all three in a ſeparate capacity; and, that where the law gave a right, there it alſo gave a remedy for that right.

That partnerſhips were as old as trade itſelf, and that the ſtatutes of 34 *Henry* VIII. and 13 *Eliz.* had made no diſtinction with regard to creditors; and by 1 *Jac. cap.* 15, creditors were to join and partake with other creditors.

That as to a commiſſion of bankruptcy, it was in the nature of an execution and not of an action, and was intended as a ſummary remedy for all ſorts of creditors, and not for any creditor in particular.

And that it was not to be doubted, that where a perſon had judgment and execution againſt ſeveral, he might levy his whole debt upon any one, and *pari ratione*, he ought to have a remedy by a commiſſion

miſſion againſt any one partner; and though the law will not ſuffer a creditor on a joint debt to bring a ſeparate action againſt any one partner, becauſe they might have as many actions as there are partners, yet in conſtruction of law each partner is debtor for the whole debt.

Suppoſe there are two partners, and one is outlawed, or dies, an action may be maintained for the whole debt againſt the other; which could not be unleſs he was conſidered as a debtor for the whole.

If an infant is a partner, which is a caſe that frequently happens, teſtators often leaving the benefit of their partnerſhip trade to their infant children. This is another inſtance that creditors would be without remedy in caſe a commiſſion of bankruptcy could not be ſupported againſt one partner, where the credit is joint.

Another inſtance may happen that one partner may be lunatic; and if in theſe inſtances commiſſions of bankruptcy could not be taken out, it would be apparently prejudicial to trade, and great inconveniencies may ariſe thereby, and it will be in the power of perſons to defraud their creditors, and nothing to the contrary can be juſtly inferred from all the acts of parliament that any particular ſort of creditors were excluded; but that all creditors in general were entitled to ſue out a commiſſion, and that the remedy in this commiſſion could not be joint, becauſe two of the partners were not bankrupts.

He likewiſe obſerved, that the diſcharge of a bankrupt, under a joint or ſeparate commiſſion, was a diſcharge of all debts, whether joint or ſeparate; and that a debt that was owing from a bankrupt, and his partners, was, in conſtruction of law, a debt owing from the bankrupt; otherwiſe he could not be diſcharged from ſuch joint debts under a ſeparate commiſſion; and if ſo, it would then clearly follow, that the debt in queſtion was due from *Criſpe* to *Perritt*; and therefore that the commiſſion was well founded.

That as to the fecond objection, that no fuch commiffion was ever fued out, and the challenge which was given thereon, he cited two cafes to fhew that fuch commiffion had iffued; which were as follows:

On the twelfth of *February*, 1723, a commiffion of bankruptcy iffued againft *Henry Hewit*, late of *Nicholas Lane*, *London*, merchant, on the petition of *John Upton*.

Upton, in behalf of himfelf and all other the creditors of *Henry Hewit* and *William Ralphfon*, of *Venice*, merchant, his partner, petitioned the lord *Macclefield*, that a commiffion might iffue againft *Hewitt*, he having become a bankrupt; and his lordfhip ordered fuch commiffion to iffue, and the fame iffued, and *Hewitt* fubmitted to the commiffion and finifhed his laft examination.

Ex parte Caruthers, before Lord *Talbot*, on the 22d of *October*, 1734. *John* and *Patrick Crawford* were merchants and partners, and owed *Caruthers* one thoufand, two hundred, and one pounds, fixteen fhillings, and eight pence; for which he recovered judgment againft them; a commiffion of bankruptcy iffued againft *Patrick Crawford* only, on a debt due from him and partner. *Caruthers* petitioned the lord chancellor, ftating the fact, and that *Patrick Crawford* had obtained a certificate from the creditors and commiffioners, then lodged, in order to be paffed by his lordfhip; and for this fuppofed irregularity in the commiffion, he prayed the certificate might not be allowed; and by the minutes taken upon the argument of this cafe, it was admitted by council, that all the creditors were joint-creditors; and the lord chancellor, upon hearing fuch council, declared his opinion, that where one partner becomes bankrupt, and the other not, a commiffion will go againft him, and he owes the debt, and it is right. The copy of this petition was taken from the bankrupt's office, and figned by Mr, *Hoxell*, the then fecretary.

And

And for theſe reaſons he ſubmitted it to the judgment of the court, that ſuch commiſſion was regularly taken out, and that *Perritt* was well warranted in ſo doing.

And on the fifth of *May*, 1744, the court gave judgment, and the lord chief juſtice *Willes* delivered the opinion of the court: and his lordſhip, Mr. Juſtice *Abney*, and Mr. Juſtice *Burnett* (Mr. Juſtice *Forteſcue* being abſent) were all of opinion, from the caſes which had been cited, and the reaſons and precedents that had been laid before them, that the commiſſion was regularly iſſued, and that a a joint creditor had a right to take out a ſeparate commiſſion, and therefore made the following rule.

William Criſpe againſt William Perritt.

May 5, 1744. Ordered, That the verdict found for the plaintiff be void, and that a verdict be entered for the defendant.

And on the eleventh of *May*, 1744, *Perritt* preferred his petition to the lord chancellor, and ſet forth the ſeveral ſteps and proceedings, and the determination of the court in this caſe: and *Criſpe* having, purſuant to his lordſhip's order of the eighteenth of *February*, 1742, depoſited one hundred pounds in the Bank, in the name of the accomptant general, to be placed to the credit of this matter, and in order to ſtay all proceedings under the commiſſion, he thereby prayed his lordſhip to diſcharge his order of the eighteenth of *February*, 1742, and that the commiſſioners might be at liberty to proceed in the execution of the commiſſion, and that the one hundred pounds paid into the Bank by *Criſpe* might be paid him towards the coſts which he had been put to, on account of ſuing out the commiſſion and proceeding at law.

And

And on the twenty-fourth of *May*, 1744, ſuch petition was heard before his lordſhip, and his lordſhip, after hearing council on both ſides, ordered that the major part of the commiſſioners named in the ſaid commiſſion, ſhould be at liberty to proceed in the execution thereof; and that the one hundred pounds paid into the Bank of *England*, in the name of the accomptant-general, ſhould be paid to *Perritt*, as part of the bankrupt's eſtate and effects; and for that purpoſe the accomptant-general was to draw on the Bank, according to the form preſcribed by act of parliament, and the orders of the court.

And on the twenty ſixth day of *May*, 1744, *Criſpe* was declared a bankrupt in the Gazette. *Dav.* 460. *The caſe of Mr.* William Criſpe.

239. *A* lends money to *B* and *C* on their bond; *B* becomes a bankrupt, and the commiſſioners aſſign his eſtate in truſt for his creditors.

A ſues the bond againſt *C*, the other obligor, and recovering judgment againſt him, takes him in execution by *ca. ſa.* and *C* thereupon paid *A* twenty-four pounds; but *C* being old, and having no eſtate, and living only upon charity, *A* conſented to diſcharge *C* out of execution.

Upon which it was objected, that this being an eſcape by the conſent of the plaintiff, the obligee, and the debt being in law entire, it was a diſcharge of the whole debt, and ſhould operate as well for the benefit of *B*, the baukrupt, the other obligor, as of *C*.

But it was anſwered, that the bankruptcy of *B*, and the aſſignment of the eſtate, were prior to the execution taken out againſt *C*: and by that aſſignment *A*, the plaintiff, had an intereſt in the eſtate of *B*, the bankrupt; which intereſt could not be diſcharged by *A*'s taking out an execution afterwards againſt *C*, the other obligor, any more than if two were bound in a bond to me, and I ſhould recover judgment, and take out an execution by

fieri

fieri facias, againſt one, and afterwards, on obtaining judgment, ſue out an execution by *ca. ſa.* againſt the other, and then conſent that the latter ſhould eſcape; this will not diſcharge the execution of the *fieri facias*, which was before compleated againſt the former obligor; and that ſtill this was harder doctrine in equity.

Lord chancellor. Let *A*, the petitioner, who is the obligee in the bond, come in as a creditor before the aſſignees for a moiety of the remaining money due on the bond; for the execution againſt *C* being ſubſequent to the aſſignment of the eſtate of *B*, the bankrupt ſhall not (at leaſt in equity) diſcharge *A*'s demand out of the eſtate of the bankrupt: but, in regard each in equity was liable but to half the debt, and *C* was not the original debtor for the whole, *A*, the petitioner, ſhall only have relief for a moiety of this remaining debt againſt the aſſignees of *B*, the bankrupt.

But lord chancellor ſaid, if *B* had been the original debtor, and had borrowed all the money, then *A* ſhould have come in before the aſſignees as a creditor for all his debt. 1 P. *Will.* 237. *Trin.* 1713. *ex parte* Smith.

Q. Why ſhould not the petitioner, in this caſe, be allowed to come in for the remainder of his whole debt out of the effects of the bankrupt, ſince each of the obligors was liable to him for the whole.

240. The petitioner *Goodwin* complained that, although he had in every thing conformed to the ſtatutes made againſt bankrupts, and had his certificate allowed, yet Mr. *Arthur Turner* had taken him in execution, and detained him in priſon for a debt due before his bankruptcy.

And the caſe appeared to be that Mr. *Turner* had lent Mr. *Dibble* one thouſand five hundred pounds on bond, and the petitioner, *Goodwin*, the ſcrivener, was bound as a ſurety; and *Goodwin* having his judgment againſt *Dibble* for fifteen hundred pounds, promiſed Mr. *Turner*, when he levied his own debt, he would

would pay Mr. *Turner*: but failing ſo to do, and *Dibble* being alſo failed, Mr. *Turner* brings his action againſt *Goodwin* on his bond. Then a commiſſion of bankruptcy iſſued againſt *Goodwin*. *June* the ſeventh, 1714, being the laſt day of *Trinity* term, a rule was given for entring up judgment; and on *June* the twenty-ſixth, *Goodwin*'s certificate was allowed. Mr. *Turner*, by the rules of the King's Bench being at liberty to enter his judgment either of *Trinity* or *Michaelmas* term, ſigned judgment as of *Michaelmas* term; and this being a judgment ſubſequent to the certificate, was not within the act of parliament.

The matter had been ſeveral times argued at law, and *Goodwin* could have no relief there, and therefore ſought to be relieved by petition to the lord chancellor.

It being the intention of the law, that all debts before the bankruptcy ſhould be diſcharged, it was ſaid that this was a contrivance to evade the ſtatute, by entring judgment as of *Michaelmas* term, when judgment was pronounced in *Trinity* term.

Per Curiam, a court of equity is not to alter the law; the ſtatute is binding in equity as well as at law; and if the judgment is good at law, it cannot be ſet aſide in equity: but it was agreed that *Goodwin* might have pleaded his certificate upon the roll, and have prevented the judgment from being entered up: and having neglected ſo to do, it was his own default, and a court of equity is not to relieve either miſpleading, or where there is a want of plea, or no proper plea put in in time: and it was alſo agreed, that *Goodwin* could not be relieved at law upon an *audita querela*, becauſe he might have pleaded his certificate before the judgment was entered up. And upon producing ſome precedents, where bankrupts had been relieved againſt jndgments obtained againſt them, they did not come up to the caſe in queſtion, and the petition was diſmiſſed.

For

For Mr. *Turner* two cafes at law were cited, *Bailey verſus Robinſon, Trin.* 6 *Ann. in banco regis*, judgment was entered againſt a bankrupt, upon a warrant of attorney, and he taken in execution during the time that his certificate was referred to the judges; and although the debt was diſcharged by the ſtatute of bankrupts, yet the court would not diſcharge him, but put him to his *audita querela*.

And the cafe of *Grumly* verſus *Smith*, 8 *Ann. Banco Regis*, a man puts in ſpecial bail to an action, and the plaintiff has judgment againſt the defendant by default. The bail ſurrendered the defendant: it was moved to diſcharge the defendant, becauſe he had liſted himſelf a ſoldier after the bail was put in, and before the judgment, but refuſed *per curiam*. 2 *Vern*, 696. *Trin.* 1715, *Ex parte Goodwin*.

241. Upon an appeal from a decree at the Rolls,

The defendant lent the plaintiff's brother one hundred and twenty pounds, for which the brother with the plaintiff were bound to the defendant in a bond for payment thereof and intereſt.

In *March*, 1711, the plaintiff became a bankrupt; and on a commiſſion iſſued out againſt him, he was accordingly found a bankrupt. The defendant arreſted the plaintiff on his bond; and on the twenty-eighth of *June* following, a renewed commiſſion is ſued againſt the plaintiff, who being found a bankrupt, ſurrendered his effects, and ſubmitted to be examined by the commiſſioners; but his certificate not being then allowed, he pleaded *non eſt factum* to the bond; whereupon a verdict and judgment was obtained againſt the bankrupt; and proceedings being alſo had againſt the bail, the bankrupt ſurrendered himſelf in diſcharge of his bail. After this, the commiſſioners, and four fifths in number and value of the creditors ſigned the certificate; and on notice in the Gazette to the creditors, on the eleventh of *November*, 1715, the certificate was allowed and confirmed by the then lord chancellor.

Upon

Upon which, this matter being diſcloſed to the court of King's Bench, and affidavit made, that the cauſe of action in the bond was before the bankruptcy, a rule was made for the bankrupt's diſcharge out of priſon, *niſi cauſa*; and no cauſe being ſhewn, the rule became abſolute.

The defendant, *Combs*, brought a *Scire facias* upon the judgment againſt the now plaintiff, the bankrupt, who pleaded the act of the fifth of the late queen, for preventing frauds, and that the cauſe of action accrued before the defendant's bankruptcy; and iſſue being joined, the jury found a verdict againſt the then defendant, the bankrupt; he (as was alledged) not being able to get the commiſſion, or a copy thereof, to produce at the trial; after which, the plaintiff in the action had judgment.

On this, the now plaintiff, the bankrupt, brought a bill to be relieved againſt the proceedings at law, and lord chancellor, on motion, granted an injunction.

Not long after, the cauſe came to a hearing before the maſter of the rolls, who diſmiſſed the bill, in regard the act of parliament, touching bankrupts, and their diſcharge, was to be pleaded, and taken advantage of at law; and this having accordingly been pleaded, and found againſt the bankrupt, there was no equity in the caſe; but it was all at law; for which reaſon the court diſmiſſed the bill.

From this decree the bankrupt appealed to the lord chancellor, before whom, in ſupport of the decree, it was objected, that the ſaid act had preſcribed in what manner the bankrupt was to take advantage of his diſcharge and certificate; *viz.* by pleading it: and if the bankrupt had not purſued this mothod, it was his own fault: that the defendant being a juſt creditor, on bond, for money lent, and which, (as it was repreſented) ſhe had earned at ſervice for her livelihood; ſhe had at leaſt an equal equity with the now plaintiff: that this court ought not to aſſiſt againſt ſuch a creditor, who had the law

on

on her ſide, eſpecially in a matter which ſeemed to be all at law. And a caſe *ex parte Goodwin* was cited, where Lord *Cowper*, upon a petition, refuſed to relieve the bankrupt, againſt whom jndgment had been recovered purely upon a matter of miſpleading.

However, the lord chancellor, in the principal caſe, reverſed the decree before the maſter of the rolls, and relieved the bankrupt againſt this judgment at law.

His lordſhip ſeemed to admit, that, were the caſe only matter of miſpleading, equity ſhould not relieve; but ſaid, it weighed with him, that this matter had been examined in the King's Bench, and the bankrupt diſcharged there; and by the ſame reaſon that one determination in a proper court, and in a proper method, would not bind, ſo alſo, if there were eight, ten, or twenty determinations, they would not be concluſive.

That as to the merits, it was plain, the bankrupt was one intended to be relieved within the act; the debt was incurred long before the bankruptcy, though this being a *ſcire facias* upon the judgment, the judgment might be ſaid in law to be the cauſe of the action, and that was after the bankruptcy; that the certificate not being obtained, and made abſolute, when *non eſt factum* was pleaded to the bond, this might excuſe ſuch plea.

That there had been a long acquieſcence by the obligee herſelf, who had ſlept under the diſcharge made by the court of King's Bench many years; and her ſuit upon the *ſcire facias* ſeemed to be the undertaking of ſome enterprizing ſolicitor, who had engaged to help her to this deſperate debt.

Then it was of weight, that the plaintiff, the bankrupt, had, upon oath, given up his all, and his examination had been no ways falſified; and if nothing was left to the bankrupt, what was the plaintiff at law contending for?

Let

Let the now plaintiff be relieved, and have a perpetual injunction againſt the defendant. 2 P. *Will.* 70. *Trin.* 1722. *Blackhall* v. *Combs.*

242. The plaintiff, being a bankrupt, endeavoured to be diſcharged with the conſent of four fifths of his creditors in number and value upon the late ſtatute. The defendant, a creditor, preferred his petition to the lord chancellor againſt the allowance of the certificate; upon which the bankrupt, upon conſideration of defendant's withdrawing his petition, gave him a bond for his whole debt: afterwards the bankrupt's certificate was allowed, and the defendant putting the bond in ſuit againſt the bankrupt, he pleaded the act of parliament, and that the bond was obtained in order to procure his diſcharge. And on a verdict for the plaintiff, the bankrupt brings his bill, inſiſting, that the bond was obtained under his neceſſity, and within the reaſon of that clauſe in the ſtatute, which makes bonds void for conſenting to the bankrupt's diſcharge, and it was repreſented as an unconſcionable thing, for one creditor to deſire more than his ſhare of the bankrupt's eſtate with the reſt; and that, on the other hand, the bankrupt ought to be favoured who had given up all to his creditors.

Curia. Here is an honeſt creditor, and the bankrupt, if he pays him all, ſtill pays but what in conſcience he ought. He that comes into equity to avoid the payment of a juſt debt, ought to come in with a clear caſe, if he hopes to ſucceed. The defendant could not be ſaid to do amiſs in petitioning the great ſeal againſt the allowance of the certificate Neither can it now appear to me, what ſucceſs that petition might have been attended with. It may be held he had juſt cauſe to petition, and the bankrupt no right to have the petition diſallowed: and the plaintiff, if he had a fair defence, ought to have made uſe of it againſt the petition: but in caſe of

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treating with the defendant to withdraw it, the other might inſiſt upon reaſonable terms for his juſt debt.

Suppoſe the preſent bill were to be diſmiſſed, the conſequence would only be, that the plaintiff muſt pay what he juſtly owes; but were he to be relieved, the defendant would thereby be put into a worſe condition than any of the other creditors; for the bankrupt's eſtate being diſtributed, he cannot now have his proportion thereof, ſo that he muſt loſe his whole debt; and it is the plaintiffs fault to come ſo late; which makes the caſe ſtill ſtronger againſt him. Nor does the law make any diſtinction, whether the bankrupt became ſo by his own extravagant way of living, or by misfortunes; and therefore he is the leſs to be favoured. It is hard enough to bar creditors of the full remedy, which the law gives for the recovery of debts. Indeed, where the words of the ſtatute are plain, they muſt be ſubmitted to; but then the bankrupt ought in ſuch caſes, to bring himſelf within it: and it would not be fair to put the defendant, who has the law on his ſide, in a worſe condition than any of the other creditors, whoſe debts are extinguiſhed by the ſtatute; therefore diſmiſs the bill with coſts. 1 P. *Will. Ca.* 181. *Eaſt.* 1720. *Lewis* v. *Chaſe.*

243. A joint commiſſion was taken out againſt the defendant and partner, and an allowance of the certificate of the commiſſioners of bankraupts was obtained from the lord chancellor purſuant to the ſtatute 5 *Geo.* II. and the defendant was now ſued by the plaintiff for a debt on his ſeparate account, and arreſted: on which it was moved, that he ſhould be diſcharged out of cuſtody on filing common bail; for the defendant had pleaded in this caſe, that the cauſe of action aroſe before the cauſe of bankruptcy; and the ſtatute of 5 *Geo.* II. ſays, *That, in caſe any ſuch bankrupt ſhall afterwards be arreſted, proſecuted, or impleaded for any debt, due before ſuch time as he, ſhe, or they become bankrupts, ſuch bankrupts ſhall be*

diſcharged upon common bail. So the only queſtion in this caſe was, Whether the certificate under the joint commiſſion ſhould operate as a diſcharge of all debts due upon the ſeparate account before the bankruptcy, as it certainly does upon the joint account.

T. for the plaintiff, argued, that, that in a joint commiſſion the ſeparate creditors who come in under the commiſſion can have no ſatisfaction for their debts till all the joint debts are paid off; and therefore they ought not to be bound by ſuch a joint commiſſion: and in this caſe the plaintiff was denied to be admitted a creditor under the joint commiſſion. For this he cited *Trinity* 11 *Ann. Goſtling* and *Bunter*, to ſhew, that if any doubt ariſes with the court, they will not admit the party to common bail.

D. The ſtatute is in general words, that the bankrupt ſhall be diſcharged on common bail from all debts owing by him before the bankruptcy; and makes no diſtinction between a joint and ſeparate commiſſion.

C. J. If there was any debt in this caſe, the court would not diſcharge the defendant on common bail, according to the caſe cited by Mr. *T*; but in this caſe, I think the defendant ought to be diſcharged on filing common bail; for the ſtatute makes no difference between a joint and ſeparate commiſſion. I have heard it ſaid, that ſeparate commiſſions are often taken out to ſave expence, though I think it is rather done to create expence; and I never could ſee any reaſon for taking out both joint and ſeparate commiſſions: for if two partners commit an act of bankruptcy, they are bankrupts in all reſpects, and cannot be ſaid to be bankrupts as to their joint eſtates, and not ſo as to their private ſeparate eſtates.

The ſtatute 5 *Geo.* II. is general, and takes no notice of ſeparate commiſſions. A diſcharge under a ſeparate commiſſion has been determined to be a

diſcharge

diſcharge of debts owing under the joint trade. Before the ſtatute 10 *Ann. cap.* 15, if there were two partners, and only one party became bankrupt, and a ſeparate commiſſion was taken out againſt him, there was no doubt but the diſcharge of that bankrupt diſcharged him from all debts which he owed in his joint as well as private capacity; but the great queſtion in that caſe was, Whether, by ſuch diſcharge of the bankrupt, the partner of ſuch bankrupt ſhould not likewiſe be diſcharged from ſuch debts, as he was diſcharged of? And therefore that ſtatute has enacted, that ſuch partner ſhall not be diſcharged; though if a joint debt is diſcharged by a ſeparate commiſſion, there can be no queſtion, but a joint commiſſion will diſcharge a ſeparate debt.

Wherefore, I think clearly, that the defendant muſt be diſcharged on filing common bail.

P. The ſuing out of a ſeparate commiſſion is only for the benefit of the clerks: and he ſpoke to the ſame effect with the chief juſtice.

L. The caſe of *Grace* and *Higham*, *Paſch.* 4 *Geo.* II. was the ſame in effect with this: it was an action againſt the defendant, as indorſer of a note upon his ſeparate credit; and on the evidence at the trial, he produced his certificate under a joint commiſſion of bankruptcy; and though, on its being made a caſe, and argued here, the court did not determine it, yet they ſeemed ſtrongly inclined to think, that the certificate was a diſcharge of the ſeparate debt; but we are now to take this caſe on the ſtatute and certificate; and the ſtatute ſays, that *he who has ſuch certificate ſhall be diſcharged from all debts owing by him before the time of that bankruptcy*; therefore we are not to conſider what directions are given in equity, as to the diviſion and diſtribution of the bankrupt's eſtate; and I think the defendant ought to be diſcharged.

Lord chancellor being of the ſame opinion, he was diſcharged on filing common bail. *Dav.* 431. in the King's Bench. *Mich.* 8 *Geo.* II. *Howard* and *Poole.*

244. Caſe relating to a certificate, with the opinion of eminent council thereon; and alſo with reſpect to plantation debts.

Three commiſſions of bankruptcy iſſued at the ſame time, one againſt *A* ſeparately, and againſt *B* ſeparately, and a joint commiſſion againſt *A* and *B* as partners, in company, and the bankrupt's certificates, on the two ſeparate commiſſions were confirmed by the lord chancellor, and delivered them, and four fifths in number and value of the company creditors ſigned a certificate for the bankrupt's diſcharge on the joint commiſſion.

At the time that the joint certificate was to have been confirmed, one of the joint creditors applied by petition to the lord chancellor, ſuggeſting that *A* had loſt more than five pounds by gaming in one day, within the year before the commiſſion iſſued, and therefore was not intitled to be diſcharged; and lord *Macclesfield* not only refuſed to continue the joint certificate, but ordered the former ſeparate certificate to be recalled and diſallowed; and allowed the joint certificate as to *B* only.

And this being a matter of very great conſequence to *A*, who had traded very conſiderably, as ſoon as his certificate was allowed, he ordered his caſe to be ſtated, and took the opinion of the moſt eminent council thereon.

The queſtions which aroſe from this caſe were ſeveral.

Firſt, Whether it was in the power of the lord chancellor, after a certificate was duly allowed, and delivered to the bankrupt, and enjoyed by him for ſeveral months, to recall the ſame *ex officio*, and deprive the party of the benefit of the diſcharge?

Reſp.

Reſp. If the bankrupt has loſt 5 *l.* at one time, and the fact ſhall be proved before the allowance of the certificate, I think the certificate ought not to be allowed by the commiſſioners of bankruptcy, or by the great ſeal; but if the bankrupt hath conformed in all things, and his certificate hath been allowed, without any objections made, on the account of gaming, by the creditors, I conceive there is not a power given to the great ſeal to recall the certificate. *S. Cowper*, 14 *June*, 1725.

The ſecond queſtion was, Whether a ſeparate certificate diſcharged the partners from joint debts? and the anſwer of Lord *Talbot* was this.

As I was clearly of opinion at firſt, that the bankrupt's ſeparate certificate, ſo long as it continued in force, diſcharged the bankrupt, not only from ſuch debts as were owing from the bankrupt on the ſeparate account, but likewiſe ſuch as were owing on the partnerſhip account; ſo I continue in the ſame opinion. I alſo concur in opinion with Mr. *Cowper*, that the lord chancellor cannot legally recall the certificate, after it is once confirmed, upon the account of a fact which was never proved, nor ever objected to, before the allowance of the certificate.

The opinion of the ſecond perſon was as follows:

Firſt, as to the chancellor's power of recalling the certificate, he ſays thus: This is a queſtion of conſiderable difficulty; but I am rather of opinion, that ſuch a confirmation cannot be revoked, ſo as to prevent the bankrupt's diſcharge; becauſe, by the ſtatute, conforming to the acts, and a certificate confirmed, is made an actual diſcharge of the bankrupt's debts due at the time of his bankruptcy; and a revocation, after the debts are once extinguiſhed, ſeems to come too late.

And as to the ſecond queſtion, Whether a ſeparate commiſſion diſcharged joint debts? his anſwer was this.

As this ſtatute extends expreſly to all debts, I am of opinion, that partnerſhip debts being debts of *A*, the certificate is equally a diſcharge as to theſe debts, as well as to others.

There was another queſtion, which aroſe in this caſe, which was this:

The ſaid *A*, before his bankruptcy, being a merchant in *London*, and in the way of his trade, at the time he became a bankrupt, was indebted to ſeveral perſons in *Virginia*, and other plantations; and the queſtion was, Whether his certificate, when confirmed here, would diſcharge him againſt his debts in caſe he went into theſe parts?

And the opinion of the late lord *Talbot*, when he was a counſel, was taken thereon, and was as follows:

The effects of *A* in the plantations are liable to the commiſſion here, and the right to them is veſted in the aſſignees; and it ſeems reaſonable, that this certificate ſhould be equally extenſive as to his diſcharge: however, as the laws of *England*, made ſince *Virginia* and other plantations were ſettled, do not extend to them, unleſs they are expreſly named, and as the laws relating to certificates do not expreſly extend to the plantations; I am of opinion, that a certificate confirmed here, will be no diſcharge to *A*, if a ſuit is commenced againſt him in *Virginia*, or the other plantations. *C. Talbot*, *Dec.* 24, 1723.

Another opinion was as follows:

I am of opinion, that the act of parliament will not extend to any of the plantations, unleſs they had been particularly mentioned; they being governed by particular laws and conſtitutions of their own. *Dav.* 437.

245. In the year 1732, a commiſſion of bankruptcy iſſued againſt *Richard Jackſon*, by the deſcription of *Richard Jackſon* of *Green Lattice Lane*, *London*, tea-merchant, and an aſſignment was made of his eſtate to *Thomas Wright* of *Lawrence Lane*, and *James*

James Huey of *Aldermanbury*, *London*, merchants, in truſt for his creditors.

Upon his firſt commiſſion he made a diſcovery of his eſtate and effects, and four parts in five of his creditors ſigned his certificate; but the commiſſioners did not think proper to ſign it.

Afterwards he ſet up the trade of a diſtiller, in the pariſh of St. *George*, *Southwark*; and in conſequence of ſuch trading, he became indebted to ſeveral perſons, and particularly to one *Thomas Sorrel*, grocer, in one hundred pounds, and upwards.

On the 31ſt of *June*, 1739, *Sorrel* ſued out another commiſſion of bankruptcy againſt him, by the deſcription of *Richard Jackſon*, of the pariſh of St. *George*, *Southwark*; and he ſubmitted to ſuch ſecond commiſſion, and obtained his certificate, which was allowed by the lord chancellor on the 5th of *June*, 1740.

He then ſet up the trade of a tea-merchant, and contracted ſeveral debts, to the amount of ſeveral hundred pounds.

In *May*, 1740, *Wright* and *Huey*, the aſſignees in the firſt commiſſion preferred a petition in the names of themſelves and all the reſt of the creditors, under the firſt commiſſion, in order to ſet aſide the ſecond commiſſion, and his certificate, which was advertiſed in the *Gazette*, to be allowed, unleſs cauſe was ſhewn to the contrary.

And pending this petition, *viz.* the 24th of *May*, 1740, a notice was publiſhed in the *London Gazette*, to the effect following. The creditors of *Richard Jackſon*, formerly of *Green Lattice Lane*, *London*, a bankrupt, who have proved their debts under the ſaid commiſſion, are deſired to meet the aſſignees on *Wedneſday* next, at the *Paul's Head* tavern in *Cateaton ſtreet*, at five 'clock in the afternoon, to aſſent to, or diſſent from, the allowance of the ſaid bankrupt's certificate, now lying before the right honourable *Philip* Lord *Hardwicke*, baron of *Hardwicke*, lord

chancellor of *Great Britain*, for confirmation, and on other ſpecial affairs.

Purſuant to this advertiſement, and to circular letters alſo ſent to the creditors under the firſt commiſſion, the aſſignees, *Hucy* and *Wilcox*, and ſome of the creditors under the firſt commiſſion, met the creditors under the ſecond commiſſion; and, upon payment of a ſum of money to them, they agreed to withdraw the petition which they had preferred to the lord chancellor, to ſet aſide the ſecond commiſſion, and the certificate advertiſed to be obtained in purſuance thereof: and *Jackſon* has carried on his trade from that time.

On the 17th of *December*, 1743, *Edmund Proudfoot* and *Thomas Huett*, two of *Jackſon*'s creditors under the firſt commiſſion, preferred their petition to the lord chancellor, and, amongſt other things, ſet forth the matters abovementioned; and that *Jackſon* had not made a fair diſcovery of his eſtate, and had prevailed on the aſſignees under the firſt commiſſion not to attend the petition; and that by means thereof he had obtained his certificate, to their great ſurprize, who had never conſented thereto.

That they were adviſed, that the ſecond commiſſion was obtained fraudulently, and that the iſſuing the ſame under theſe circumſtances, was irregular, and that the ſaid certificate was obtained, in order to prevent the creditors under the ſaid firſt commiſſion from recovering their debts from the ſaid *Richard Jackſon*, who was then, as they were aſſured, able to pay all his creditors their juſt demands.

They therefore prayed, that the commiſſion might be ſuperſeded, and that all proceedings under the ſame, with the bankrupt's certificate, might be ſet aſide, and that the clerks to both the commiſſions might attend, with the proceedings therein.

On the 17th of *December*, 1743, his lordſhip ordered the parties to attend, and that the proceedings under both commiſſions ſhould be produced.

And

And ſoon afterwards ſuch petition came on to be heard before his lordſhip, and was learnedly argued by the gentlemen at the bar on both ſides; and it was admitted, that if a bankrupt had a firſt commiſſion out againſt him, and had not obtained his certificate in ſuch firſt commiſſion, that if a ſecond commiſſion came out againſt him, that ſuch ſecond commiſſion could not regularly iſſue; and that all the proceedings therein, and the certificate obtained by virtue thereof, were void, and of no effect; and had it been attended with thoſe circumſtances only, the petition might not have been improper,

But in this caſe his lordſhip was pleaſed to make theſe eſſential diſtinctions, and to the effect following.

Firſt, That the parties had acquieſced under the allowance of the certificate under the ſecond commiſſion, from the 5th of *June*, 1740, being the time of *Jackſon*'s obtaining ſuch certificate, to the 17th of *December*, 1743, being three years and an half, and had never made any complaint of the ſame.

Secondly, There had been a meeting between the aſſignees and ſeveral of the creditors under the firſt and ſecond commiſſions; and that the petition which was intended to be preſented to the court for ſtaying *Jackſon*'s certificate under the ſecond commiſſion, was by the conſent of the aſſignees, and the creditors under the firſt commiſſion, who were preſent, and had public notice in the *Gazette* to meet the aſſignees and creditors under the ſecond, and circular letters ſent them for that purpoſe; and that they had agreed, that ſuch petition ſhould be withdrawn, in conſideration of a ſum of money paid by the creditors under the ſecond commiſſion, to the creditors under the firſt commiſſion, and that this was in the nature of an acquieſcence and conſent from the creditors of the firſt commiſſion, that *Jackſon* ſhould have his certificate under the ſecond commiſſion.

Thirdly,

Thirdly, That it did not appear to him, but that the petitioners, *Proudfoot* and *Hewett*, were well acquainted with the ſteps that were taken by the aſſignees and creditors in the firſt commiſſion, and that they had notice of the ſame; in regard they had not denied the ſame by their affidavit, but had only ſwore, that they did not know, remember, or believe, that they ever conſented to the withdrawing the petition preferred by *Wright* and *Huey*, to ſet aſide the certificate under the ſecond commiſſion; and that if the aſſignees had done amiſs, the creditors had a remedy againſt them.

Fourthly, That *Jackſon* had, under the ſanction of the court, carried on a conſiderable trade, and that it would be contrary to the juſtice of a court of equity to prejudice innocent perſons, who might have been induced to have given him future credit, believing him to be a free perſon, on having ſuch certificate: and the conſequence would be, that all his dealings from that time muſt be opened and unravelled.

And for theſe reaſons, amongſt others, his lordſhip was pleaſed to diſmiſs the petition. *Before Lord* Hardwicke, *in* 1744. *Ex parte Jackſon. Dav.* 440.

246. On a commiſſion againſt *Peacock* a bankrupt, ſued out by the plaintiffs, a diſtribution was made of three hundred and ſeventy pounds to the plaintiffs. Afterwards, the plaintiffs, in two ſuits at law, proſecuted by them, were nonſuited in one, and a verdict againſt them; which ſuits were to have recovered ſix hundred pounds, part of the bankrupt's eſtate, and then they exhibited a bill in chancery, and there were diſmiſſed; becauſe, bankrupt, or not, was only triable at law; then they ſued at law, and had judgment, and alſo execution for ſix hundred pounds. Then *Langley*, a creditor, prays to be admitted in, and tenders charges of the commiſſion, and that he may be admitted to partake in ſo much of the ſix hundred pounds, and other eſtate, *ultra*

and

and beyond what was already diſtributed; the commiſſioners admit him, and call the plaintiffs to account, which they refuſing to do, the commiſſioners ſue the plaintiffs on a covenant, which the plaintiffs had given the commiſſioners, as is uſual.

The plaintiffs now ſued to be relieved againſt the covenant, on two reaſons:

Firſt, That after the four months elapſed, and diſtribution, no creditors came in.

Secondly, That they had ſpent in the ſuits nine hundred pounds.

The cauſe was now heard; the defendants council argued, that *Langley* would not come in to diſturb the firſt diſtribution, but might come in for the reſidue, of which no diſtribution was made; for in that the firſt creditors had no more intereſt than the defendant; and there are no negative words in 21 *Jac.* which makes the reſtraint; but as to what is diſtributed by the precedent law, 13 *Eliz.* all creditors, whether they ſue out the commiſſion or not, might at any time come into the commiſſion; for by that ſtatute, each creditor is to have his proportion, *pro rata*, out of the bankrupt's eſtate, which made the execution of the ſtatute, in point of diſtribution, *uneaſy* and *difficult*; becauſe it was hard to find out all the creditors; and, on the other hand, it was too great a power in the commiſſioners by that law; becauſe the commiſſioners might, the next day after the commiſſion, or as ſoon as they pleaſed, ſell and diſpoſe of the whole eſtate: to obviate which, 21 *Jac.* gives remedy; and the words in that ſtatute (*before diſtribution*) muſt not be underſtood of the eſtate that is *not* diſtributed.

As I was about to argue that point further, it was alledged at the bar, that *Langley*'s demand was vain; for nothing could come to him, if he did not contribute to the charge the plaintiffs had been at; for the eſtate to come in, *viz.* the reſidue would not be beneficial to him. Six hundred pounds only is recovered; out of which, three hundred

dred pounds, and one hundred and ſeventy pounds being deducted, one hundred and thirty pounds remained; and if their charges in recovery were allowed, nothing would remain.

But Mr. *Keck*, of counſel with the plaintiffs, acknowledged the defendant was to come into the commiſſion, paying the charge.

The lord keeper referred the account of the charges to be ſpecially reported by the maſter; for *Langley* inſiſted, that he had borne two hundred pounds in charge with the plaintiffs, and is to bear part of the charge of the commiſſion, not of the ſuit; for the recovery is to their own uſe, *viz.* the four hundred and ſeventy pounds not of unneceſſary ſuits, wherein alſo they failed. *Chan. Rep.* 35 *Car.* II. *Harding* and others, againſt *Marſh*, *Langley*, and others.

247. A creditor offered proof of his debt to the commiſſioners of bankruptcy, which they diſallowed; diſtribution was not yet made. It was alledged, that the proof was ſufficient; and moved that the chancellor would be attended by both ſides, to hear and give order therein.

The lord chancellor. Why ſhould I not leave it to the courſe the ſtatute hath provided? If it be granted in one, it will be aſked in all caſes: yet at laſt it was ordered. *Chan. Rep. Eaſt.* 28 *Car.* II. *Anon.*

248. *Salkeld* was was a clothier in town, and *Hale* made cloth in *Wiltſhire*; *Salkeld* was indebted to *Hale* in one hundred and eighty pounds for cloths; and afterwards, by a bill of ſale, aſſigned over theſe cloths, amongſt other things, to his father-in-law, *Jackſon*, towards ſatisfaction of a debt pretended to be due from him to *Jackſon*.

Hale brought an action at law againſt *Salkeld*, and having obtained judgment, took him in execution on a *ca. ſa.* and this was about two years ſince. An act was made the laſt ſeſſions, whereby a bankrupt, in caſe he ſurrenders himſelf to be examined, and four

four fifths in value and number of his creditors ſign his certificate, and teſtify their conſent, *&c.* is to be diſcharged.

After this, the bankrupt's father-in-law takes out a commiſſion of bankruptcy againſt *Salkeld*, under which *Hale* is prevailed on to come and be aſſignee, being told, that otherwiſe the bankrupt's father-in-law would ſink the eſtate, and get him diſcharged; it proving, that the bankrupt's remaining eſtate was but ſome few ſhillings, and ſome deſperate debts.

Salkeld, the bankrupt, petitions that he might be diſcharged out of execution, ſince *Hale*, at whoſe ſuit he was taken in execution, had come into the commiſſion, and proved his debt, nay, was the aſſignee under the commiſſion, and that this had been often ſettled; nor could it make any diverſity, whether the bankrupt's eſtate was great or ſmall; for the creditors could have but all. That though *Hale* had propoſed waving all benefit and advantage accruing from the commiſſion; yet this was now too late, he having come in under it, proved his debt, and conſented to be aſſignee, which was a plain election to proceed this way; and being once made, could not be waved afterwards.

On the other ſide, it was inſiſted, that if fraud appeared on the bankrupt's ſide, and an honeſt debt on the creditor's, equity ought not to interfere in prejudice of the honeſt creditor, and in favour of the fraudulent bankrupt, which lord chancellor admitted.

That there was fraud apparent, when the bankrupt's father-in-law took out the commiſſion, which muſt be intended in favour of the bankrupt, and not his creditors; whereas the creditors good is the proper end of ſuing out commiſſions.

That it might be thought neceſſary *Hale* ſhould prove his debt before the commiſſioners, in order to oppoſe the bankrupt's diſcharge; and this was held reaſonable by the lord chancellor.

That

That the reaſon of its having been frequently ruled, that a creditor could not come in before commiſſioners, and then detain the body of the bankrupt in priſon, was becauſe it would be unconſcionable the creditor ſhould detain the bankrupt's body in cuſtody for non-payment of his debts; and yet ſeize all his eſtate wherewith he was to pay them; but this caſe differed, the bankrupt having no eſtate left to ſeize, in regard all had been before made away, by the bill of ſale to his father-in-law.

That another reaſon why the creditor ſhould not detain the bankrupt's body in priſon for debt, was becauſe, by coming into the commiſſion the creditor elected to have the benefit of the bankrupt's eſtate towards ſatisfying his debt, and therefore ought to wave the former execution of his body; but here could be no election of an eſtate, where there was none. And this was like the caſe of an *elegit*, to extend the moiety of the land, where, after ſuch an execution, the plaintiff, it is true, could not take the perſon of the defendant; but if the ſheriff ſhould return, that *there was no land*, this would be no election, and the plaintiff might take the body of the defendant. Notwithſtanding that, in this caſe, the creditor, to ſhew he was ſatisfied there was no eſtate of the bankrupt's left to be diſtributed, was willing to wave all benefit and advantage under the commiſſion.

Cur. This commiſſion is plainly ſued out fraudulently by the bankrupt's father-in-law to diſcharge the bankrupt out of cuſtody. The propoſal is fair on the creditor's ſide to wave any benefit under the commiſſion; and therefore ought to be accepted. The creditor cannot be ſaid to elect to be ſatisfied out of the eſtate, where there is none; which more plainly diſtinguiſhes this caſe.

I will not diſcharge this bankrupt to the prejudice of a creditor, where it appears on the face of the thing, that the commiſſion was ſued out in favour of the bankrupt himſelf by his father-in-law, and not for the

the ſervice and advantage of the creditors. 1 P. *Will.* 560. *Trin.* 1719, *ex parte* Salkeld.

249. Upon the petition of a bankrupt, complaining that *A*, one of his creditors, had come in under the commiſſion, and proved his debt, yet had arreſted the bankrupt, *&c.* praying to be diſcharged, the council of the other ſide inſiſted, that, by the ſtatute of the 13th *Eliz. cap.* 7, it is enacted, that, if a creditor be not fully ſatisfied out of the bankrupt's effects, he may notwithſtanding take his courſe at law againſt the bankrupt for the reſidue of his debt: and though by the 1ſt *Ann. cap.* 12, if the bankrupt has his certificate ſigned by four fifths in number and value of his creditors, and allowed by the lord chancellor, then, and not otherwiſe, the bankrupt is diſcharged of his debts; yet, in this caſe, the bankrupt was not within the later ſtatute, ſo as to have his debts diſcharged; he having not got his certificate allowed, and was within the ſtatute of 13 *Eliz.* liable to be ſued by the creditors for the debt; eſpecially in this caſe, the creditor coming into the commiſſion, for no other reaſon but to oppoſe the bankrupt's certificate which he would have had, if the creditor had not come in and proved his debt.

That the creditor is willing to wave taking any advantage of the bankrupt's eſtate or effects, and therefore it was fit he ſhould be at liberty to ſue the bankrupt at law, he not having got any certificate; otherwiſe the creditor might be under a dilemma. If he had not come in, the bankrupt would have gained his certificate, ſigned by four fifths of his creditors in number and value; and now he had come in, though for no other end than to oppoſe the bankrupt's having his certificate; yet endeavours were uſed to deprive him of the benefit of the law againſt the bankrupt.

Lord chancellor. It has been the conſtruction of the court of equity upon the later ſtatute, which diſcharges the bankrupt of his debts, on his procuring a certificate ſigned by four fifths of his creditors,

and

and allowed by the chancellor, that where a trader becomes a bankrupt, and any one of his creditors comes in before the commiſſion to prove his debt, though with deſign only to oppoſe the bankrupt's certificate; yet this proceeding of the creditor is an election to take his remedy for his debts under the commiſſion; and if, pending that, the creditor ſues and arreſts the bankrupt, it is taken to be an oppreſſion; therefore let the creditor, at his own expence, diſcharge the bankrupt out of cuſtody.

But if ſuch creditor will wave having any benefit under the ſtatute, ſtay a reaſonable time, and there is an improbability of the bankrupt's being able to gain his certificate ſigned by four fifths in number and value of his creditors, or allowed by the court; in ſuch caſe, if the creditor applies to the court, declaring his conſent to wave any right or ſhare of the bankrupt's eſtate under the commiſſion, and praying that he may ſue the bankrupt, I think it might be reaſonable for the court to give leave to ſuch creditor to proceed at law againſt the bankrupt for his debts. 2 *P. Will.* 394. *Mich.* 1726. *Anon.*

250. Mr. *John Rowel*, merchant, being indebted to *Towne*, *Wright*, and others, became bankrupt; and, on the fifteenth of *February*, 1737, a commiſſion was taken out againſt him, and he was found bankrupt. Afterwards he filed his bill againſt the defendants *Towne*, and *Chapman*, his attorney, to be relieved in ſeveral matters therein complained of; and in ſuch bill he ſet forth, that *Towne*, after the iſſuing of the commiſſion, ſwore an affidavit in the country of his debt, and empowered his attorney, by letter of attorney, to vote and act for him, in the choice of aſſignees, and otherwiſe, under the ſaid commiſſion; and on the ſixth of *March*, 1738, following, *Chapman* proved *Towne*'s debt before the commiſſioners, and voted for him in the choice of aſſignees, and *Towne* was admitted a creditor.

That *Rowel*, in all things conforming, *Towne* aſſured him he would ſign his certificate.

Towne

Towne arrested *Rowel* for this debt, and *Lindsay* became bail for *Rowel*'s appearance at the return of the writ, being the second return of *Hiliary* term then next; and about the twenty-seventh of *January*, 1738, at the return of the writ, no bail was put in; and on the twenty-seventh of *March* following, being after the *Lent* assizes, the defendant, *Towne*, took an assignment of the bailbond, and, by virtue of such assignment, brought two actions in *London* upon such bailbonds, against *Rowel* and *Lindsay*, and signed judgment against them on such bailbonds; which judgment was afterwards set aside, because they were signed without *oyer* of the bond, according to the practice of the court; and on the twenty-ninth of *June*, 1739, on *Towne*'s waving, by rule of court, all benefit under the commission, the judgments were set aside without costs, and *Rowel* and *Lindsay* were ordered to plead an issuable plea: and in *Michaelmas* term following, *Towne* obtained two judgments on the bailbonds.

Rowel had brought a writ of error, but that *Towne* had affirmed his judgment, and served *Rowel* and *Lindsay* with process upon the affirmance: and on the nineteenth of *May* caused two bills to be exhibited on the affirmance of the said two judgments in error, against *Rowel* and *Lindsay*.

Towne having waved all benefit under the commission, *Rowel* in the mean time procured four fifths in number and value of his creditors, whose debts amounted to twenty pounds and upwards, and also the commissioners, to sign his certificate, and gets the same duly confirmed by the lord chancellor, and accordingly pleaded such certificate in bar to the said bills. The defendant, *Towne*, demurred to the pleas, and insisted to proceed to judgment for the penalty and costs. And for these reasons *Rowel* prayed for a perpetual injunction against *Towne* and *Chapman*, and to stay all proceedings at law, on the judgment obtained on the bailbonds.

The defendant, *Towne*, put in his answer to the

bill. and admitted the facts abovementioned; and ſays, that about the time of ſigning his judgments, *Rowel* petitioned the lord chancellor to be relieved in the ſame manner as he had done by his bill; but that his lordſhip was of opinion, he could make no order, in regard *Towne* had before made his election to proceed at law for the recovery of his debt, and had waved all benefit, as a creditor under the commiſſion; and he inſiſted that the bailbond, and each judgment obtained thereon was a new cauſe of action againſt *Rowel*, and that *Towne* was no ways bound by the commiſſion, nor is *Rowel* diſcharged by any act relating to bankrupts; and he inſiſted on having a right to argue the demurrers, and that he ſhould not be reſtrained from proceeding at law.

The defendant, *Chapman*, ſo far as the bill affected him, put in a proper anſwer to it; and on the ſeventh of *February*, 1742, this cauſe was heard in the court of Exchequer, and the court diſmiſſed *Rowel* and *Lindſay*'s bill with coſts.

Afterwards *Rowel* and *Lindſay* petitioned for a rehearing of the cauſe; and for the reaſons contained in ſuch petition, and on making the uſual depoſit, the court granted ſuch rehearing.

And on the twenty-firſt of *February*, 1743, this cauſe was re-heard, and the court took time to conſider of the caſe till *Eaſter* term following; and on the twentieth of *April*, 1744, the right honourable the lord chief baron *Parker* gave judgment in this cauſe; and the whole court were unanimouſly of opinion that the plaintiffs could not be relieved in this caſe, it being their own neglect that they did not put in bail above, or ſurrender in time; which might have been done: and that the defendant, *Towne*, was guilty of no fraud, but had only taken the advantage which the law had given for the recovery of a juſt debt; and that he had excluded himſelf from taking any benefit under the commiſſion of bankruptcy; and they therefore confirmed their former decree

decree, and ordered the depoſit to be paid to the defendant's clerk in court.

The material caſes which were cited, were, the *counteſs of Gainſborough* verſus *Gifford*, 2 P. *Will. Mich.* 1727, where the court ſays, A court of equity ought to be very tender how they help any defendant after a trial at law, where ſuch defendant had an opportunity to defend himſelf. A caſe *ex parte* Blevin, in *November*, 1733, heard on petition before the lord *Talbot*, of the like nature with *Rowel's*: and alſo the caſes of *Blackhall* and *Combes*, and *ex parte* Goodwin, 2 *Vern.* 696. In the court of Exchequer, 20th *April*, 1744. *Rowel* and *Lindſay* againſt *Towne* and *Chapman*. *Dav.* 434.

251. The bill ſet forth, that *Pointz*, being indebted to the plaintiffs nine hundred pounds, and to others three thouſand pounds, became a bankrupt, and on the ſixteenth of *November*, 1680, a commiſſion was ſued out againſt him, and he found a bankrupt; and that ſeveral ſuits of tapeſtry of his were in the defendant's hands, which the commiſſioners had aſſigned to the plaintiffs for the benefit of his creditors, and that they ought to have an account thereof; but that the defendants pretended they were pawned or ſold to him by *Pointz* the bankrupt, without any truſt; whereas it was on a truſt, and done to conceal them; and ſo prayed a diſcovery and relief.

The defendant pleaded, that neither he, nor any in truſt for him, hath, nor ever had, any goods belonging to *Pointz*, but what the defendant bought for a full value in money paid by the defendant to *Pointz*, or his order, before any commiſſion of bankruptcy was ſued out againſt him, and before the defendant had any notice that *Pointz* was a bankrupt, or had done any acts of bankruptcy, and without any truſt or condition, other than that the defendant by parol did declare, that if *Pointz* repaid the money paid him by the defendant, and intereſt for the ſame, at the time agreed on, and then paſt, that then he

would deliver to *Pointz* the goods; and averred that *Pointz* failed to pay the money, or any part of it, at the time agreed on; and that *Pointz* two years ſince agreed, that the ſame ſhould be ſold by *J. S.* and that by the money to be raiſed, the defendant ſhould be paid his money with intereſt, and the ſurplus to *Pointz*; and averred, that the money raiſed by ſale was two hundred pounds ſhort of what *Pointz* owed, and which two hundred pounds was ſtill due; and that, on the twenty-ninth of *October*, 1680, *Pointz* gave the defendant a general releaſe to that time; and that the defendant had no dealings with him ſince; that he had been examined by the commiſſioners, as far as by the law he was obliged, and inſiſted, that, being a purchaſer, as aforeſaid, he ought not to be put to anſwer, to ſubject himſelf to an action, which the bill aimed at, by preſſing a diſcovery of what goods of the bankrupt's came to the defendant's hands.

The lord chancellor allowed the plea, and ſaid, the law was hard againſt tradeſmen that dealt with bankrupts before notice; and the aſſignee ought not to be aſſiſted in equity in any ſuch caſe.

Note, There was the like rule before given in the caſe of one *Portman*, the banker in the preſent lord chancellor's time; the caſe of a creditor's advancing money after an act of bankruptcy and a commiſſion ſued out, though not known to the creditor. 1 *Vern.* 27, *Hil.* 1681. *Abery* and *Jones*, creditors of *Pointz*, againſt *Williams*.

252. The caſe was, That one *Slaney* was joint factor with one *Cudmore* at *Liſbon*, in *Portugal*, in 1682, and they being conſiderably indebted, procured a letter of licence from their creditors on the eighteenth of *November*, 1684. *Slaney* being ſeiſed of the manor of *Lulſey*, in the county of *Worceſter*, demiſes the ſame to one *Minſhall* for five hundred years, by way of mortgage, to ſecure a debt of eight hundred pounds. Some time after *Slaney* comes

over

over into *England*, and in *March* following borrows two thouſand two hundred pounds of *Sedgwick*, and by leaſe and releaſe, on the ſixth and ſeventh of *March*, 1684, makes a mortgage in fee to him of the ſaid manor; and on the ſeventh of *March*, *Minſhall*, being paid off with this money, aſſigns his mortgage to one *Harris* in truſt for *Sedgwick*; that, on the twenty-firſt of *February*, 1684, but unknown to *Sedgwick*, a commiſſion of bankruptcy was taken out againſt *Slaney* and *Cudmore*; and on the ſecond of *March*, before *Sedgwicke*'s mortgage, the commiſſioners had made an aſſignment to *Yate* and *Birds*, in truſt for the creditors. *Sedgwick* underſtanding that the eſtate was ſufficient to pay all the creditors who were then come in, as alſo to pay him his two thouſand two hundred pounds, is adviſed to come in as a creditor, and paid his contribution; and on *Auguſt* the fourteenth, 1685, there was a deed of diſtribution made of the ſaid manor; that is to ſay, the ſame was valued at three thouſand pounds, and that money diſtributed amongſt the creditors. *Sedgwick*'s ſhare was two thouſand, two hundred, and thirty-five pounds, ſix ſhillings, and five pence. On the ſecond of *December*, 1685, more creditors came in, and a ſecond diſtribution is made. In *January*, 1685, the aſſignees ſold the manor, and conveyed it to *Noden* in truſt for *Sedgwick*, for three thouſand pounds had in money and bills, the whole conſideration money there, and had an allowance of his whole debt, and paid the reſt of the money to the aſſignees for the creditors. After this, ſeveral orders on petitions were made by the late lord-chancellor *Jefferies*, for ſetting aſide this purchaſe, and proceedings upon the ſtatute of bankrupt, and for letting in other creditors; and the aſſignees were ordered to repay the money, and *Noden* to reconvey to the aſſignees.

The plaintiffs bill was, by the creditors of *Slaney*, to be let in under the commiſſion of bankrupt, and to have the lands ſold for their ſatisfaction, and to

redeem the firſt mortgage, if precedent to the bankruptcy. *Sedgwick*'s bill was to have a reconveyance from the aſſignees, and to be reſtored to what he had loſt by arbitrary orders on the petitions. The principal queſtions in the caſe were,

Firſt, Whether a man who lends money to a bankrupt after a commiſſion of bankruptcy ſued out againſt him, and actual notice of it, can come in under the ſtatute as a creditor?

Secondly, Whether *Sedgwick*, having lent his money without any actual notice of the bankruptcy, and having an aſſignment of *Minſhall*'s mortgage, by which he might protect himſelf at law, a court of equity ſhall take that plank from an innocent purchaſer?

Thirdly, Whether any diſtribution in this caſe had been well made, in regard that though a deed for that purpoſe was made in *Auguſt*, 1685, and the three thouſand pounds mentioned to be diſtributed amongſt the creditors, yet the manor was not then ſold, nor had the aſſignees any money to diſtribute; but this was a colourable diſtribution, and contrived to defraud and ſhove out the reſt of the creditors?

As to the laſt matter, it was anſwered, that the diſtribution was regular, and ſo held by the court; and it is uſual to make a diſtribution before the eſtate be ſold. The words of the act of parliament are, *That the commiſſioners ſhall have the ordering of the bankrupt's eſtates*: ſo there is no neceſſity for them to ſell and diſtribute the money amongſt the creditors; if they allot a proportion of the land to each creditor, it is enough.

As to the firſt queſtion, Whether *Sedgwick* could come as a creditor for money lent after the commiſſion ſued, Lord *Trevor* and *Hutchins* held, that he could not; *Rawlinſon* doubted, and took it to be a new point not yet ſettled, and that there were no words in the act to exclude him.

As

As to the ſecond point, Lord *Rawlinſon* was of opinion, that *Sedgwick*, an innocent purchaſer, ought to have the advantage of all his ſureties to defend himſelf at law, and that this court ought not to take any advantage from him; and ſaid, he would conſider the ſeveral ſteps that this court had gone in favour of purchaſers, in allowing them to defend themſelves by any advantage they could get at law. That where a purchaſer buys in an old ſtatute, or mortgage, though nothing be due on it, he ſhall be admitted to defend himſelf by it; as was the caſe of *Higden* and *Calamy*, 21 *Car.* II. and the caſe of *Weymonſel* and *Hawland*, *May*, 1674; and many caſes of that kind; that purchaſers, who have got an advantage at law, though by undue means, have been permitted to profit by it; and cited the caſes of *Burnell* and *Ellis*, where *Ellis* had got the deed of rentcharge into his hands; and 22 *C.* II. Sir *John Faggs*'s caſe, who got the deed of entail into his own hands by a trick; and the caſe of *Harcourt* and *Knowel*, where a releaſe was obtained from a grantee of a rentcharge without any conſideration and by fraud, and yet a purchaſer, admitted to take the advantage of it; and the caſe of Lord *Huntington* and *Greenville*, firſt decreed to protect a purchaſer, and after that a leaſe gained from an adminiſtrator *de bonis non*; and the caſe of *Seybourn* and *Clifton*, where plaintiff and defendant had each of them purchaſed a reverſion expectant on the death of a tenant for life; the plaintiff's bill was, that he might examine his witneſſes to preſerve their teſtimony and be permitted to try his title in the life-time of the tenant for life; but as the purchaſer was a defendant, the court could do nothing in it, but diſmiſſed the plaintiff's bill; and he loſt his land for want of examining his witneſſes. And as to what has been objected, that the ſuing out the commiſſion was preſumptive notice of the bankruptcy to all perſons; and that *Sedgwick* was bound to take notice of it. He ſaid, this court had

been always very careful not to impeach purchasers by presumptive notice. And for this cited the case of *Brampton* and *Barker*, 2 *die Junii*, 1671. Tenant for life, remainder to his first son, mortgaged for one thousand five hundred pounds; the deed of settlement was then produced, and seen by the purchaser, who, notwithstanding, lent the money, being advised, that the tenant for life not having then any son born, could destroy the contingent remainders; whereas there was a son born five days before the lending of the money; but the mortgagee's having no notice thereof, and having got the deed of settlement, the court would not relieve against the purchaser, but dismissed the bill. And the case of *Philips* and *Redhill*, the 17th of *November*, 1679, where the tenant for life sold as tenant in fee, and the deed of settlement, at the time of the purchase, was produced, and delivered to the purchaser; yet the court would not affect the purchaser with the presumptive notice, but dismissed the bill.

As to the second objection, that a bankrupt had nothing in him to sell or dispose of, but the estate was divested by act of parliament, and the inheritance and equity of redemption vested in the commissioners, who, by the act, have power to perform conditions; and at the time of the commission sued out, the mortgage was not forfeited, he said, there had been cases in this court, where a man purchased from a bankrupt, who had no estate at all in him, and yet such purchaser, by buying in an incumbrance, has been admitted to protect himself; as where a man first made a mortgage, and after, for a further consideration, absolutely released the equity of redemption; and after this makes a second mortgage for one thousand pounds; such second mortgagee shall protect himself by an old statute; and cited the case of *Taylor* and *Tabor*, where the defendant in the late times having purchased under the parliament title, after the restoration of king *Charles* the

the ſecond, purchaſed in an *old ſtatute*, and this court would not relieve againſt the purchaſer. And he puts this caſe: A man articles to ſell unto *J. S.* afterwards *J. D.* gets a ſecond article, and pays his money, and has a conveyance. *J. S.* afterwards aſſigns the benefit of his articles to a man, who gets in a ſtatute, and he was permitted to defend himſelf by it; and ſaid, as *Sedgwick* had in this caſe got the law on his ſide, he could not conſent to do any thing, to take a plank from an innocent purchaſer, as *Sedgwick* appeared to be, no notice being proved; nor could it be preſumed he would have lent two thouſand two hundred pounds, if he had known *Slaney* was a bankrupt; and although the commiſſion was ſued out before the money lent, he did not think that ought to bind him, or to be ſuch notice as ſhould affect a purchaſer.

Lord *Trevor* and *Hutchins* were of a contrary opinion, and held, firſt, that he was not a creditor within the act of parliament; and ſecondly, that he was not in the caſe of an innocent purchaſer; when the commiſſion was ſued out he was bound to take notice.

Lord *Hutchins* ſaid the caſe turned upon this, that *Slaney*, at the time of *Sedgwick*'s mortgage, had no eſtate or intereſt in him, either in law or equity; all was diveſted and gone by the act of parliament, to which all perſons are preſumed to be parties, and are bound by it; and the act gives the commiſſioners power to perform conditions, and in this caſe the mortgage was not forfeited; but in caſe it had, he held, the commiſſioners ſhould have had the equity of redemption, and ſaid, the caſes that had been put would not come up to this caſe; for that there was a difference, where a man had diveſted himſelf of an eſtate, by his own act, and where it was taken out of him by act of parliament, whereunto all parties are ſuppoſed to be parties, and are concluded by it; and ſaid, *that* ſeemed a very ſtrong caſe to him, that

had

had been put, of a purchaſer's, in the late times, buying in a ſtatute to protect his title; if that had been allowed, moſt cavaliers would have loſt their eſtates; and looked upon the diſtribution that was in this caſe, to be a fraudulent contrivance to divide, when they had nothing to diſtribute: and though *Sedgwick* had an honeſt debt, he had loſt that honeſty by playing a trick to come at it; and cited Sir *William Beverſham*'s ſiſter's caſe, who, by adding a ſeal to a note, which was ſufficient without it, loſt her ſecurity; and thought the lord chancellor had done well to ſet aſide the colourable diſtribution and ſale, and that he might well do it, even upon a petition, and had been ſo done in Lord *Clarendon*'s time; and that it appeared in the caſe, that *Slaney* was a factor in *Portugal*, and, in 1682, did that in *Portugal*, which, if done in *England*, would have made him a bankrupt; but that queſtion was not yet ſettled, Whether the committing acts of bankruptcy beyond ſea, or whether trading only beyond ſea, be within the reach of the ſtatutes. He ſaid, in the caſe of one *Anderſon*, who traded in *Ireland*, he was adjudged a bankrupt within the ſtatute; but then it was proved, he came ſometimes over to *Cheſter* to buy goods; and therefore he did not ſee any bankruptcy that would reach *Minſhall*'s mortgage.

And thereupon it was decreed, that the lands ſhould be ſold, *Sedgwick* to be paid the eight hundred pounds and intereſt due on *Minſhall*'s mortgage; then the coſts of this ſuit to be borne out of the eſtate, and the reſidue to be paid amongſt all the creditors, in proportion; but *Sedgwick* not to come in for his two thouſand three hundred pounds. 1 *Vern. Trin.* 1690. *Hitchcock et al.* v. *Sedgwick.*

253. The defendant, *Ward*, became indebted to the plaintiff in 1730, and afterwards committed an act of bankruptcy; upon which, the plaintiff being the petitioning creditor, took out a commiſſion of bankruptcy againſt the defendant; and, in order to over-

over-reach and make void as many of his conveyances and ſettlements as poſſible, the creditors, on a bill filed, endeavoured to prove him a bankrupt as far backward as they could, and did actually prove, to the ſatisfaction of the court, that he committed an act of bankruptcy in the year 1726. Then it became a queſtion, Whether the commiſſion of bankruptcy, and all that was done under it, was not wrong, in regard that the debt of the petitioning creditor, on which it was founded, was contracted ſubſequent in time to the firſt act of bankruptcy.

After this matter had been argued, and time taken to conſider of it, the lord chancellor declared it was clear, that nobody but a creditor could take out a commiſſion of bankruptcy againſt another; for that the acts of parliament were all made for the relief of creditors; and likewiſe, that ſuch commiſſion muſt iſſue upon the petition of ſome creditor, who would be relieved under it. Now, if the debt is ſubſequent to the act of bankruptcy, the creditor cannot come in under the commiſſion againſt the effects of the bankrupt, though the perſon of the bankrupt himſelf will be liable. The general rule is, not to determine the time of the bankruptcy, but only that the perſon was a bankrupt, antecedent to the commiſſion; for then all the creditors before that time will have a right to come in; but when that matter is minutely entered into, it muſt be diſtinguiſhed, which creditors are precedent, and which are ſubſequent to the act of bankruptcy. If the defendant became a bankrupt in 1726, then the petitioning creditor is out of the caſe; but if not till 1730, when the plaintiff's debt was ſubſiſting, then all is right. What puzzles the caſe is, that the aſſignees have been over diligent, and, in order to reſcind as many of the defendant's acts as they could, have endeavoured to prove him a bankrupt as far back as poſſible; by which they have cut up their own foundation, by proving an act of bankruptcy in

1726.

1726. Then the difficulty is, whether the act of bankruptcy in 1726, cannot be conſidered as purged, being ten years ſince, and no commiſſion taken out upon it. I am moſt inclined to direct an action of *trover*, in which the jury will conſider, whether the defendant was a bankrupt in 1726, or not; and if they pay no regard to it, I am ſure I will not.

Then Mr. *Fazakerly* objected, that the court would never direct a trial at law, unleſs it appeared doubtful, whether he was a banktupt in 1726, which, he ſaid, was not the preſent caſe. And he ſaid, it was never determined that an act of bankruptcy could be waved or purged.

The lord chancellor diſmiſſed the plaintiff's bill, without prejudice; from which order of diſmiſſion, the plaintiffs appealed to the houſe of lords, for the following reaſons.

Firſt, if an act of bankruptcy, ſecretly committed by a perſon continuing in a public courſe of trade for ſeveral years afterwards, ſhould be allowed to overturn a commiſſion carried on by the whole body of the bankrupt's creditors, who have joined in the commiſſion, by ſeeking relief under it, and not impeached or oppoſed by one ſingle creditor; it would be of dangerous conſequence to trade and credit; and by that means, the ſeveral acts made for relief of creditors might, in ſeveral inſtances, and plainly will, in the appellant's caſe, become a ſnare and deluſion to creditors, inſtead of a relief and protection to them.

Secondly, If this doctrine ſhould be eſtabliſhed, it will greatly deter creditors from taking out commiſſions, which are attended with very great expence; for they never can be ſure, that a prior ſecret act of bankruptcy has not been committed; and it will be the higheſt encouragement to diſhoneſt debtors to commit ſecret acts of bankruptcy, on purpoſe to protect them from commiſſions, or to render them fruitleſs.

Thirdly,

Thirdly, though an act of bankruptcy disables the bankrupt from contracting a debt with another person, to the prejudice of creditors, prior to the act of bankruptcy, if they insist on their priority; yet the bankrupt may contract a debt, not only to charge his person, but even his effects, if they are sufficient to pay the whole, or if the prior creditors do not insist on a preference; and in case the prior creditors wave their preference, and allow such person to be a creditor, it is apprehended, the bankrupt himself, or his confederates, are not at liberty to say that he is not a creditor.

Fourthly, The several acts of bankruptcy which forbid the issuing of commissions, except on the petition of a creditor for an hundred pounds, were not in force when this commission issued, which was grounded on the old statutes, which authorise a commission to issue on complaint to the lord chancellor; and a creditor who had a right in any event to have his debt paid out of the effects of his debtor, though others may have a preference to him, is aggrieved by the fraudulent concealment of those effects, and has an equal right to complain, if not a greater, than those creditors who are prior to him; because he is in great danger of losing his debt by those concealments; and it is not proved, nor even pretended, by the answers of the defendants, that there may not be sufficient of the bankrupt's effects to satisfy the petitioning creditor's debt, though all the other creditors had insisted (which they have not done) on a priority.

Fifthly, As to the merits of the case, it is apprehended, that the several deeds before stated will appear to be voluntary, fraudulent, and void, as against the bankrupt's creditors. And although the articles pretended to be made upon the marriage of the respondent, *Knox Ward*, may seem to be founded upon a valuable consideration; yet as the same rest only upon covenants, and the several conveyances

in

truſt for the ſaid *Knox Ward*, are fraudulent and void. as againſt creditors, and the ſame ought not to be ſet up in prejudice to the bankrupt's honeſt creditors.

Reaſons for the Reſpondents.

The fact of the caſe, on which the queſtion in the preſent appeal will turn, ſtands thus.

The appellants have by their bill expreſly charged, that the ſaid *John Ward* was a bankrupt before the making any of the deeds in the bill; and the firſt deeds are dated in the year 1725, and they have proved by *Joſeph Savage*, whoſe depoſition they read, that he denied the ſaid *John Ward* to ſeveral of his creditors in the year 1726, and that by the ſaid *John Ward*'s expreſs order; which evidence unqueſtionably proves an act of bankruptcy in *John Ward* in 1726.

The appellants have alſo proved, that the ſaid *John Ward* cauſed himſelf to be denied to his creditors in 1730; and, in the intermediate time between theſe two acts, became debtor to *Surtees*, on whoſe application alone this commiſſion iſſued. The queſtion is,

If this commiſſion, thus iſſued, can be maintained? If it cannot, it is apprehended the bill is clearly improper, and the order for diſmiſſing it, right; but if the commiſſion can be maintained, then the appellants will have a right to proceed; and it is humbly contended, that this commiſſion cannot be maintained amongſt many others, for the following reaſons.

Firſt, That it is humbly apprehended, no commiſſion can iſſue but on the petition of ſome perſon, who has by law a right to ſue for it; and every commiſſion iſſuing otherwiſe, and all the proceedings on it are illegal and void.

Secondly, Becauſe none have a right to ſue out ſuch commiſſions, but creditors, and ſuch creditors only

only who could be intended to be defrauded by the bankruptcy, which cannot be the caſe of thoſe who did not become creditors till after the bankruptcy committed, unleſs a man could abſcond to avoid creditors, when he had none.

Thirdly, Becauſe thoſe who become creditors after the bankruptcy committed, cannot be admitted to prove their debts, or receive a dividend with the reſt under the commiſſion iſſued; and it would be an abſurdity to allow a man to be a petitioning creditor, and yet not capable of relief under the commiſſion he applies for.

Fourthly, Becauſe though *John Ward* did not cauſe himſelf to be denied in the year 1730 to a creditor, after the debt contracted to Mr. *Surtees*, *that*, it is humbly apprehended, is wholly immaterial, ſince he became a bankrupt by the firſt act, which over-reaches all intermediate tranſactions between that and the time of the commiſſion; and as he continued a bankrupt to the time of his ſecond denial of himſelf, in 1730, this could not make him more a bankrupt than he was before, or prevent his eſtate from veſting in legal aſſignees, as from the time of his firſt abſconding; and the plaintiffs are ſo far from making that to be their caſe, by their bill, that they carry the act of bankruptcy ſo far back as the year 1725, and prove it, on purpoſe to deſtroy the intermediate deeds and ſettlements, under which the reſpondents claim as purchaſers on a marriage contract.

For which, among many other reaſons, the reſpondents humbly hope the appeal may be diſmiſſed with coſts.

The Order of the Houſe of Lords thereon.

Die Jovis, 23 *Feb.* 1737.

After hearing counſel on *Monday* and *Tueſday* laſt, upon the petition and appeal of *Conrade de Golis*, eſq.

eſq. and *John Read*, gentleman, aſſignees of the eſtate and effects of *John Ward*, late of *London*, merchant, a bankrupt, complaining of a decree of diſmiſſion of the court of chancery of the 4th of *December*, 1736, made in a cauſe, wherein the appellants were complainants, and *Philip Jones*, *Francis Pyle*, *Elizabeth Rogers*, *Ralph Ward*, *Knox Ward*, and *Elizabeth* his wife, *Thomas Nettleton*, *James Lamborne*, and *George Wallis*, defendants; and praying that the ſame may be reverſed, and the appellants may have ſuch other relief as to the wiſdom of this houſe ſhould ſeem meet; as alſo upon the anſwer of the above named defendants put in to the ſaid appeal, and due conſideration had of what was offered on either ſide in this cauſe, and the unanimous opinion of all the judges having been this day delivered upon a point of law to them propoſed, it is ordered and adjudged, by the lords ſpiritual and temporal, in parliament aſſembled, that the ſaid decree of diſmiſſion, complained of in the ſaid appeal, be, and the ſame is hereby reverſed; and it is further ordered, that the ſaid court of chancery do proceed to hear the ſaid cauſe upon the merits thereof, according to the courſe of that court. *Lord Talbot's Caſ.* 243. *De Golls*, and others, againſt *Ward*, and others.

254. *J. H.* by ſpecial verdict, appeared to be a bankrupt, and was committed two months in 1651, and recommitted for another act in 1657; and then the term for years whereof he was poſſeſſed was ſold to the defendant by the bankrupt; and in 1660, the commiſſioners ſold to the plaintiff; *Baldwin* moved to ſtay judgment, becauſe this commiſſion ſhall relate to the firſt act in 1651, which was the moſt notorious, being by impriſonment; although had the firſt act been by concealment, or outlawry, I agree, the party creditor need not take notice of it by 21 *Jac.* which ſhall not be taken favourably againſt the purchaſer, but only againſt the bankrupt himſelf. The caſe of *Gove* in *C. B.* although after five

five years, yet the ſale of the bankrupt being after the laſt commiſſion ſued out, was adjudged void; becauſe in ſuch caſe it ſhall relate to the laſt act. So the caſe of *Bradford* againſt *Bludworth*, on the bankruptcy of *Harriſon*: *Sed curia contra*; for the words of the act are not, after he ſhall *firſt* be a bankrupt, for then the earlier being a bankrupt, would, after five years, be a perpetual *ſuperſedeas* to all tradeſmen; but if one had ſold, and then five years paſs without any act of bankruptcy, the purchaſer is ſafe, and no after-act can hurt him; but where the bankrupt continueth in poſſeſſion, any after-act is ſufficient to bind the term. Judgment clearly for the plaintiff. 1 *Keb.* 722. *Eaſt.* 16. *Car.* II. *Spenſer* againſt *Venacre.*

255. The defendant bought of *Portman*, jewels, plate, *&c.* for valuable conſideration paid; *Portman* became a bankrupt, and a commiſſion was taken out againſt him; and the commiſſioners examined *Ballard*, the defendant, touching the goods, what they were, and the value of them; but on pretence that he did not anſwer, the commiſſioners committed him; but on an *habeas corpus* in the King's Bench, he was delivered. The anſwer before the commiſſioners being as to the time, *&c. to his remembrance, and that he could not poſſibly anſwer further*; and by conſent he was again to attend, and be re-examined, which he did.

And now the plaintiff's bill is to have the defendant's anſwer in chancery, where he pleaded, that he had no goods of *Portman*'s, but ſuch as he really paid for before the commiſſion iſſued againſt *Portman*, and that he had no notice of any act or thing by *Portman*, whereby he was a bankrupt, but truly paid for what he bought.

It was objected, he ought to anſwer the time of the bankruptcy, elſe the ſtatute againſt bankrupts will be of little effect.

E contra. It is no equity to make a man in ſuch a caſe pay twice,

Lord chancellor ruled the plea good, ſaying, it is an infallible rule, that a purchaſer for a valuable conſideration, without notice, ſhall never diſcover any thing to hurt himſelf; but as to the point of bankruptcy, whether that the defendant being formerly examined by the commiſſioners on oath, ſhould be examined, or put to anſwer to the ſame matter here. The chancellor ſeemed to be of opinion, that he ſhould; but the other point being clear, there was no debate on this point.

In the caſe of *Wagſtaff* againſt *Read*, the court made a diſtinction, if the ſale were not at an extreme under-value, as for five ſhillings, or the like; and ordered the defendant to anſwer what and how much he paid; ſo as the plaintiff did conſent to take no advantage of the diſcovery, but here in this court, and not at law, which the plaintiff conſented to, and ſubſcribed his conſent with the regiſter, and then the defendant was to anſwer. *Chan. Rep. Mich.* 33 *Car.* II. *Perrat* againſt *Ballard.*

256. The plaintiff, as aſſignee under a commiſſion of bankruptcy againſt *Tyſſen*, filed his bill againſt *Ward* and others, to ſet aſide ſeveral conveyances, which *Ward*, and the other defendants in truſt for him, had obtained of *Tyſſen*, after his bankruptcy, and alſo without any conſideration. The defendant *Ward* pleaded himſelf a purchaſer for a valuable conſideration of all the eſtates in queſtion; and alſo that he had no notice of *Tyſſen*'s being a trader, or of his having committed any act of bankruptcy: whereupon an iſſue was directed, and the jury found *Tyſſen* a bankrupt, and fixed the day of the bankruptcy to the 25th of *December*, 1732. *Tyſſen* being ſeized of a conſiderable real and perſonal eſtate, ſome part of which real eſtate was in mortgage to *Bradley* for one thouſand pounds, and another part to *Harkſhaw* for five hundred pounds, which latter mortgage, and ſome others, were by aſſignments veſted in the defendant *Ward*; and great part of *Tyſſen*'s perſonal eſtate being conveyed in truſt

for

for *Ward*, ſubſequent to *Tyſſen*'s bankruptcy, *Ward* got ſeveral mortgages, and alſo releaſes of the equity of redemption, of all the aforeſaid eſtates, which he inſiſted upon againſt the plaintiffs, and the creditors under the commiſſion.

It was argued for the plaintiff, that all things done by *Tyſſen*, ſubſequent to this bankruptcy, were as ſo many void acts, and that *Ward* could have no advantage from them. The act of bankruptcy was in itſelf of ſuch force, as to put *Tyſſen*, from that very time, under an incapacity of diſpoſing of, or affecting any of his real or perſonal eſtate, to the prejudice of his creditors under his commiſſion; that the legal effects of the aſſignment avoided all intermediate acts between the bankruptcy and the aſſignment, ſo as to give the whole to the aſſignees, according to the caſe of *Kidwell* verſus *Player*. 1 *Salk*. 111. and the caſe of *Philips* verſus *Thompſon*, 3 *Lev*. 191, where an act of bankruptcy was committed after a *fieri facias*, delivered to the ſheriff, and before ſeizure of the goods by him, and held, that the execution was of no effect againſt the aſſignees; and the law is the ſame with regard to the bankrupt's diſability over his real eſtate, by the ſtatute 13 *Eliz. cap*. 7. and 21 *Jac*. I. *cap*. 19. The plaintiff there would be intitled to avoid an execution by *elegit*, if the act of bankruptcy was committed before the *libera'e*, and the plaintiff would in ſuch caſe be accountable for the profits intermediate to the bankruptcy and the aſſignment. It was further argued, that by the ſtatute 13 *Eliz*. a purchaſer would be defeated, although there ſhould be forty years after an act of bankruptcy, and before a commiſſion; and although the purchaſer had no notice; for the words of the ſtatute are general, *after bankruptcy*; and the proviſo in the end of the ſtatute makes it ſtill plainer, *viz*. that *aſſurances made by a bankrupt before bankruptcy, and* bona fide, *ſhall not be defeated*. This was hard doctrine againſt fair pur-

chaſers without notice; but ſo the law was, and there is therefore a proviſo in the end of 21 *Jac.* I. That no purchaſer for a good and valuable conſideration ſhall be impeached, unleſs the commiſſion be ſued out within five years after the bankruptcy, and here the commiſſion was ſued out within three years; wherefore they inſiſted, that the incumbrances ſhould be redeemed, and that the plaintiff ſhould have the reſidue of the real and peaſonal eſtate; and that *Ward* ſhould not come in as a creditor for any money lent after bankruptcy.

It was alſo further urged, that the equity of the redemption of the mortgaged premiſes was an intereſt transferred by the ſtatute to the plaintiff, and that the defendant having no notice of the bankruptcy, when he lent his money, would therefore make no alteration; beſides, all the conveyances after the 25th day of *December*, 1722, are fraudulent for want of a conſideration; and therefore *Ward* had not the uſual equity of a purchaſer for a valuable conſideration, *without notice*; and then, as he had not paid a conſideration, his not knowing of the bankruptcy will not avail him. It appears likewiſe, that he had notice of *Tyſſen*'s abſconding, and being often denied to his creditors; and though *Ward* might be ignorant of the legal conſequence, yet *ignorantia juris non excuſat*, according to the caſe of *Hitchcock* verſus *Sedgewicke*. 2 *Vern.* 156.

On the other hand, it was inſiſted for the defendant, that as he had the law on his ſide, and equal equity, at leaſt, with the plaintiff, if not a ſuperior one, in regard he paid a valuable conſideration for all the deeds after *Tyſſen*'s bankruptcy, and beſides had no notice of it; that the court would not interpoſe to his prejudice: and the caſe of *Hitchcock* and *Sedgewick*, 2 *Vern.* 156, was cited, to ſhew how far purchaſers without notice were favoured in a court of equity; as alſo 2 *Chan. Ca.* 72, 136, 156. 1 *Vern.* 27. 2 *Vern.* 599.

N. B.

N. B. There was no proof of a valuable conſideration, but only ſome few ſcattering ſums, which *Ward* let *Tyſſen* have at different times.

Lord chancellor. The firſt conſideration will be as to that part of the eſtate which is in mortgage to *Bradley*; and the queſtion is, as to that, whether the plaintiffs, the aſſignees of *Tyſſen*, are to redeem it, or the defendant *Ward*.

The releaſe of the equity of redemption, which *Ward* has obtained, appears to be a groſs impoſition; for the conſideration is mentioned to be two thouſand pounds; yet not a farthing appears to be paid. The ſtatutes that have been mentioned concerning bankruptcy bind equitable as well as legal rights, and courts of equity, as well as law. Theſe ſtatutes were founded on ſuppoſed frauds of the bankrupts, and therefore intended to put them under diſabilities to prejudice and defraud their creditors. In the preſent caſe the equity of redemption of his eſtate was made over by *Tyſſen* after his bankruptcy, (tho' before the aſſignment) nothing therefore paſſed by this conveyance; and if *Bradley*'s mortgage had been out of the caſe, and the plaintiff would then have purchaſed of him; after an act of bankruptcy, and then a commiſſion had iſſued within five years, the aſſignees under that commiſſion muſt have prevailed. Creditors after bankruptcy are in the nature of purchaſers, and have a prior equity to any other perſons; and here *Ward*'s is a prior conveyance, but from a perſon who had nothing to convey. *Ward* could not come in at law as a creditor for this ſum of two thouſand pounds; beſides, it is an impoſition, the money never having been advanced; yet, if it had been actually paid, as the legal eſtate was in *Bradley*, it would not have been any benefit to *Ward*, but he muſt have loſt the money.

Decreed, therefore, as to this eſtate, that *Bradley* ſhould re-convey to the defendant, upon payment of principal and intereſt.

The next queſtion is, as to theſe eſtates, which being incumbered by *Tyſſen* before his bankruptcy, thoſe incumbrances are ſince, by meſne aſſignments, veſted in *Ward*: and here it appears, that *Ward* has, after the bankruptcy, and before the plaintiffs aſſignment, got a releaſe of the equity of redemption of theſe eſtates from *Tyſſen*, for three thouſand ſix hundred pounds.

Here the legal eſtate is in *Ward*, and the queſtion is, Whether in a court of equity it ſhall be taken away, without *Ward*'s being paid all the money he advanced? Though the rule be the ſame here as at law, upon conſtruction of ſtatutes, yet, where an act is to be carried into execution here, there are certain rules to be obſerved, which bind equally in caſe of an act of parliament, as of the common law. One of thoſe rules is, that a purchaſer for a valuable conſideration without notice, having as good title to equity as any other perſon, this court will never take any advantage from him, and, conſequently, will not grant a diſcovery againſt him, of the only equity he has to defend himſelf by; which, if he ſhould be obliged to diſcover, the other party would immediately take advantage of. And there certainly may be caſes, where a purchaſer for a valuable conſideration, without notice of an act of bankruptcy, ſhall not be obliged in this court to diſcover any thing (whether incumbrances that he has got in, or any other thing) but al advantages ſhall be left to him to defend himſelf. Suppoſe two purchaſers, without notice, and the ſecond by chance gets hold of an old term, he ſhall defend himſelf thereby againſt the firſt, who ſtill is as much a purchaſer for a valuable conſideration as himſelf. I do not therefore think a purchaſer for a valuable conſideration, without notice of the bankruptcy, to be relieved againſt in this court, within 21 *Jac.* I.

The caſe of *Hitchcock* verſus *Sedgwick*, 2 *Vern.* 156, is very different from this; for a commiſſion

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is a *public act, of which all are bound to take notice*; but an act of bankruptcy may be ſo ſecret as to be impoſſible to be known: and therefore I think that *Ward*, having the legal eſtate in him, ſhall, by that, be protected, for ſo much as he really, and *bona fide*, paid *Tyſſen*, before notice of *Tyſſen*'s bankruptcy.

And therefore directed an iſſue, upon the point of notice, to try whether *Ward* had notice of *Tyſſen*'s bankruptcy, and when; and as to the other part of the eſtate, which, though not in *Ward* himſelf, was in others, who were truſtees for *Ward*, that muſt be conſidered as one and the ſame thing. Lord *Talbot*'s Caſes, 65. *Collet verſus De Golls and Ward.*

257. *Bellamy* had been a *Turkey* merchant, and dealt largely with the defendants *Hoxton*, *Swan* and *Blackburn*, who were partners, giving them raw and thrown ſilk and receiving, in return, hard ware and other goods.

By an entry in the defendant's books, dated the twelfth of *Auguſt*, 1754, there appeared to be a conſiderable ballance due from *Bellamy* to the defendants. On the thirty-firſt of the ſame *Auguſt*, *Bellamy* delivered 16 bales of ſilk to the defendants, valued at three thouſand, eight hundred, and ninety five pounds, thirteen ſhillings; and alſo gave them notes to the amount of three thouſand, five hundred and twenty-eight pounds, in part of ſatisfaction for the ballance then due to them; and on the ſaid thirty-firſt of *Auguſt*, *Bellamy* became a bankrupt.

The plaintiffs having brought their bill for repayment of the value of theſe notes and ſilks; and the queſtion being, Whether the defendants received theſe goods and notes, *bona fide*; or, Whether *Bellamy*, was a bankrupt before the delivery of them to the defendants, ſo as that the defendants may be obliged to refund the value of them, in caſe they had notice of the bankruptcy at the time of the delivery

thereof; the counſel for the plaintiffs thought it neceſſary for them to ſhew two things.

Firſt, That the notes and ſilks were the property of *Bellamy*.

Secondly, That he committed an act of bankruptcy before the delivery of them.

Firſt, He ſtated the mutual dealings and tranſactions between them; that, in 1752, *Bellamy*'s credit began to decline, that he was peſtered with duns and creditors; that he accepted bills, and was not punctual in the payment thereof; that, in 1754, the ſhip *Reynolds* arrived from *Alleppo* in the river *Thames*; that part of the cargo belonged to *Bellamy*, and part to others; that ſixteen bales of ſilk, belonging to *Bellamy*, which were a part of this cargo, were delivered to the defendants from on board the ſaid ſhip *Reynolds*, and never put into any warehouſe; that on the thirty-firſt of *Auguſt*, the day of the bankruptcy, the defendants, *Hopton* and *Bellamy*, were inſeparable and in ſecret converſation with each other the whole day; that *Bellamy*'s clerk was not called or conſulted on that occaſion to witneſs their tranſactions; that, according to the defendant's books, there was, on the twelfth of *Auguſt*, 1754, a conſiderable ballance due to the defendants, which had afterwards increaſed to the thirty-firſt of the ſame month; that it was a clear fact, and admitted by both parties, that the goods and notes were delivered to the defendants by, and were the property of, *Bellamy*, on the thirty-firſt of *Auguſt*, being the day of the bankruptcy; that it appeared in evidence that *Bellamy* committed ſeveral acts of bankruptcy before the ſaid thirty-firſt of *Auguſt*, and particularly between the twentieth and twenty-ſeventh of *March*, 1754, when he ordered his clerk to deny him to his creditors at ſeveral times when he was at home.

Then he ſtated the act of 19 *Geo.* II, whereby it is provided, *&c.* [*See paragraph* 130.] and ſaid, that as the law ſtood before this act of parliament,

if

if goods were bought by, or ſold to, a bankrupt, ſubſequent to his committing an act of bankruptcy, ſuch ſeller muſt come in for ſatisfaction under the commiſſion of bankruptcy; that the general view of this act was to except certain *bona fide* creditors, and to take away, as it were, the penalty of the law as it ſtood before that time; that this act intended to provide for two caſes:

Firſt, Where goods were ſold to the bankrupt, and the ſeller receives ſuch bankrupt's money.

Secondly, Where bills were drawn for the bankrupt, and he receives the money for them.

So that there is no caſe within the act, but where *money* is actually *paid to*, or *received by*, the bankrupt; that the law never meant to alter the rule of equality among creditors, who muſt be let in for an equal diſtribution; that the court will always zealouſly adhere to this rule, unleſs a party clearly brings himſelf within the act, and appears with clean hands before the court: that this caſe is clearly not within the act of parliament; for theſe goods and notes are delivered to the defendant for a ballance ſuppoſed, but not proved, to be due at the time of the delivery thereof; it is not proved, how this ballance became due; it does not appear, that it was for goods ſold to the bankrupt; and if there was any ballance at all, it muſt be in conſequence of that ruinous, fatal, and deſtructive practice among merchants of drawing, indorſing, exchanging, and negotiating notes, in order to ſupport their credit, and force, as it were, a trade without any ſolid bottom, and not on account of notes fairly negotiated for a valuable conſideration, in the common and ordinary courſe of dealing.

The counſel for the defendants urged, that the argument of the gentlemen on the other ſide turned principally on the conſtruction of the act of parliament; but that he would conſider the queſtion on the original inherent juriſdiction of this court, antecedent to that act in favour of purchaſers for a valuable

able conſideration, and fair and honeſt creditors not affected with notice; that *Bellamy* imported large quantities of raw and thrown ſilk, part of which he ſold to the defendants; that in return he received cutlery and hard ware; that they continued to deal together in this manner for five years before *Auguſt*, 1754; and paſſed ſeveral bills and notes in the city of *London* in the courſe of their dealings; that on the twelfth of *Auguſt*, 1754, there was a large ballance due to the defendants from *Bellamy*, who on the thirty-firſt of the ſame month, delivered them goods and notes nearly to the amount of that ballance; that, though he might order himſelf to be denied to one creditor, yet, if he afterwards appeared on the Exchange, and tranſacted buſineſs publicly, ſuch denial cannot be conſtrued an act of bankruptcy; and it is always matter of evidence to a jury, *quo animo*, he abſconded or diſappeared: and ſuppoſing *Bellamy* had committed acts of bankruptcy before the thirty-firſt of *Auguſt*, yet, if the defendants had notice of ſuch act, they cannot be affected thereby.

They inſiſted that, in caſe of an aſſignment made by a bankrupt before any act of bankruptcy to a creditor, the latter may bring a bill and have a ſpecific lien on the bankrupt's eſtate; or a creditor may bring a bill to cover his debt: but that where the aſſignee continued in poſſeſſion, as in the caſe of *Ryall* and *Rowlls*, this was eſteemed ſuch a badge of fraud as would vitiate the act of 21 *Jac.* I. He cited 2 *Wil.* 427, where a goldſmith, after ſhutting up his ſhop, being greatly indebted, aſſigned his ſtock in the wine trade, in which he was concerned to *J. S.* being a particular creditor, and to ſecure his debt, but without the knowledge of *J. S.* and becomes a bankrupt the very next day.

J. S. brings a bill for the benefit of the aſſignment, and decreed for him. He likewiſe cited Chan. Ca. fo. 135 and fo. 156; as alſo 2 *Vern. Wilker* and *Bodington.*

A pur-

A purchaſes of a man who had cammitted an act of bankruptcy, but without notice thereof; afterwards a commiſſion is taken out, and there being a term ſtanding out in truſtees, the aſſignee brings a bill againſt them and the purchaſer to have the term aſſigned to him. The bill was diſmiſſed.

Theſe caſes eſtabliſhed the ſettled doctrine of the court in regard to purchaſers and creditors, and are further ſtrengthened by the nineteenth of his late majeſty.

And as to the particular circumſtances of this caſe, ſurely the ſuſpicion, and evidence of the book-keeper, that *Hoxton* and *Bellamy* were together all day on the twenty-firſt of *Auguſt*, will not affect the defendant with notice.

Another objection is, that the goods were delivered without being put into the bankrupt's warehouſe; nothing of this is put in iſſue, and if it was any thing uncommon or extraordinary, it was capable of ſpecial proof. But a plain and obvious anſwer to this objection is, that when a large quantity of goods is imported, it is neceſſary to put them into a warehouſe, that the proprietor may ſeek out for a purchaſer for them; but where he knows his chap, and tranſacts buſineſs with a conſtant dealer, the goods are immediately delivered from on board the ſhip. *Bellamy* became a bankrupt in *Auguſt*, 1754. The plaintiffs might have brought trover in *Michaelmas* term following; but inſtead of bringing their action they lay by and neglected that opportunity until *April*, 1755, when the defendants, *Swan* and *Hopton*, became bankrupts.

In *March*, 1756, they petitioned to come in as creditors under the commiſſion of *Swan* and *Hopton*; but the petition was diſmiſſed. They urged, that a bankrupt may prefer one creditor to anſwer; and that this preference was eſtabliſhed both by law and equity; the ground and reaſon of which was, that a man having property may diſpoſe thereof as he thought

thought proper. That where the mortgagee ſuffers goods to remain in the cuſtody of the mortgager, it has been conſtrued on 21 *Jac.* I. a badge of fraud, becauſe the poſſeſſion of the goods has a natural tendency to draw in others; that the petition preſented to, and diſmiſſed by, Lord *Hardwicke*, in 1756, ſubſtantially determined the plaintiff's preſent claim; and that, in the principal caſe, all circumſtances conſidered, there was only a ſuſpicion of the partners having notice.

It was ſaid, that in caſes, of this nature, if the court finds equal merit in the parties, they will not interpoſe againſt fair, honeſt, and *bona fide* creditors, but leave the plaintiffs to their remedy at law; that in the caſe of *Wagſtaff* and *Read*, the aſſignees had no remedy; that the defendants have no particular merit to entitle them to relief in this court; that *Bellamy*, the bankrupt, received from on board the ſhip *Reynolds*, four hundred and ſeventy-ſix bags of cotton belonging to the defendants, ſold them, and received the money; that as to the defendants having notice of it, it ſeemed inconſiſtent with this fact; for had they known that he was not ſolvent, they would not have truſted him as their factor to ſell the cotton, and given him ſix hundred pounds to pay the duty thereof; and that they hoped the court would preſerve the uniformity of deciſions, and, where there was equal merit, leave things as they found them.

The counſel for the plaintiffs replied, that this was a new caſe, and never before determined; and if the plaintiffs cannot come in under the commiſſion, the unavoidable conſequence will be, that they will have no remedy at this or the other ſide of the hall; and a court of equity will never ſuffer a party to depart without remedy. The plaintiffs come here upon a legal right accrued to them in a ſpecial manner under ſeveral acts of parliament; and they are clearly within the ſtrict letter of theſe acts.

The

The fact is briefly this: *Bellamy* being, on the thirry-firſt of *Auguſt*, 1754. poſſeſſed of notes and goods to the amount of above ſeven thouſand pounds in a fraudulent and colluſive manner, delivered them to the defendants on that day; before which it is proved he committed ſeveral acts of bankruptcy: and conſequently the delivery of ſuch goods and notes muſt be void. The aſſignees had by law a right to all *Bellamy*'s property: and being ſo intitled, uſed all legal diligence; for his final examination was not finiſhed till *December*, and in *April* following they took out a writ: but before the trial the partners broke; which put an end to the action of trover, as there was no new converſion in the aſſignees.

The caſes cited, are all caſes of purchaſers from the bankrupt for a valuable conſideration, and where the aſſignees came for a diſcovery in order to bring actions at law.

In the caſe of *Wilker* and *Waddington*, in *Vern*, an old legal term was purchaſed for a valuable conſideration. The caſe of the actual payment of money differs in reaſon, common ſenſe, and equity, from this caſe; for where a purchaſer takes goods and gives money, he does not thereby prejudice or leſſen the the fund; which, in the principal caſe, is materially charged and injured by the delivery of the ſilks and notes.

It is objected, that the petition was rejected; but it is well known, that, in all caſes were petitions relative to the effects of a bankrupt are preſented, in which any matter of nicety appears, the court never determines it in a ſummary way. The petition ſtated a variety of facts, in a looſe manner, but the court rejected them all but one, and ordered the plaintiffs to bring their bill, as they ſhould be adviſed. If the plaintiffs cannot have relief here, they are without remedy; for they cannot have the body of the bankrupt, ſince he may plead his certificate: and no action lies againſt the aſſignees, ſince, if this

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debt be recovered, every creditor has an equal right to recover his debt.

Lord keeper. This bill is brought by the plaintiffs to be let in as creditors under the commiſſion of bankruptcy taken out againſt the defendants *Hopton* and *Swan*, for the value of ſixteen bales of ſilk, amounting to three thouſand, eight hundred and ninety-five pounds, thirteen ſhillings; and notes to the amount of three thouſand, five hundred, and twenty-eight pounds; making, in the whole, ſeven thouſand, four hundred, and twenty-three pounds, thirteen ſhillings; which is a very conſiderable ſum; and this is a veay unfortunate caſe, as both parties are inſolvent, and conſequently either of them muſt ſuffer. *Bellamy* being a *Turkey* merchant, dealt conſiderably with the defendants in the years 1752, 1753, and to the nineteenth of *March*, 1754, which was the time of their laſt dealing; and there being a conſiderable ballance due from *Bellamy* to the de-defendants, he, on the thirty-firſt of *Auguſt*, 1754, delivered to them ſilks and notes to ſuch value as reduced the ballance to about forty pounds. Then *Bellamy* quitted his houſe, and abſconded; and upon a commiſſion of bankruptcy being taken out againſt him, the plaintiffs inſiſted on having the value of the goods and notes from the defendants; and that they veſted from the twenty-ſeventh of *March* preceding; and as the defendants are now bankrupts, the plaintiffs claim to be let in as creditors under the commiſſion taken out againſt them.

And now, upon the circumſtances of this caſe, the only queſtion ſeems to be, Whether this court can interpoſe, or whether the defendants have not an equal equity with the plaintiffs, and ſuch a right as repels the claim of the latter.

In order, therefore, to determine this queſtion, I muſt mention ſome facts which are clear and inconteſtable.

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The firſt is, That before the thirty-firſt of *Auguſt*, 1754, *Bellamy* committed ſeveral acts of bankruptcy, particularly between the twentieth and twenty-ſeventh of *March* preceding.

In the ſecond place, there is the ſtrongeſt negative proof that the defendants bought the goods and notes without notice of *Bellamy*'s inſolvency. This fact is proved by two witneſſes, whom the plaintiffs have examined and given credit to, and their teſtimony ſtands now un-impeached. It is therefore certain they were purchaſers of theſe goods and notes in account, which was the ſame thing as if they had paid money for them.

I muſt agree with the counſel for the plaintiffs, that the whole tranſaction is ſuſpicious, for the dealings between *Bellamy* and the defendants were very extenſive before *November*, 1753, from which time it began to decline, and entirely ſtopped the nineteenth of *March*, 1754, when there was a large ballance due to the defendants, who did not preſs for, or inſiſt upon, being paid this ballance; nor was any part of it paid till after the arrival of the *Turkey* ſhips, though *Bellamy*, it is proved, was in the mean time perpetually dunned by his creditors. On the thirty-firſt of *Auguſt*, the goods and notes are delivered to the defendants; and as ſoon as that tranſaction is cloſed, *Bellamy* abſconds, goes away, and defrauds his creditors.

Theſe circumſtances are ſtrong grounds of ſuſpicion and ſufficient to convince any perſon that there was ſome colluſion between the parties; but judges are not to determine matters of right upon a critical examination and diſquiſition of ſuſpicious circumſtances, and the conviction of their own mind. They are hampered and fettered by the rules of law. I do not ſit here in a court of conjecture, but in a court of conſcience, and muſt judge *ſecundum allegata et probata*. I cannot ground my judgment upon ſuſpicions againſt ſtubborn, ſteady, and legal proof;

proof; and I am bound to take up the matter in the light it appears upon the fact. It appears *Bellamy* was a bankrupt before the thirty-firſt of *Auguſt* 1754; and it likewiſe appears, that the defendants had no notice of the bankruptcy or inſolvency before that time; and theſe facts bring the queſtion to a common principle of this court; which is, that where a purchaſer or creditor has got hold of ſatisfaction for his debt, the court can't interpoſe to take it away from him, unleſs in a caſe very ſpecially circumſtanced.

This principle is fixed and eſtabliſhed by the caſes that have been cited, which are, in my opinion, in point.

The counſel for the plaintiff would have diſtinguiſhed thoſe caſes from the preſent; but I think they are exactly ſimilar, and that there is no difference in effect between ballancing or diſcharging an account with caſh, and delivering goods and notes to the amount and in ſatisfaction of it; and that as far as a perſon brings goods, he brings money.

In the caſe of *Brown* and ------ the goods were ſold after the bankruptcy. It is the ſame caſe here; for the goods and bills muſt be conſidered as purchaſed by the defenndants, who are ſo far *perquiſitores*. The juriſdiction of this court is ſtopt by the circumſtances and merit of the defendants; and how can conſcience take from an innocent purchaſer what he has got?

Suppoſe a man poſſeſſed of mortgages ſtanding in the name of a truſtee, and after an act of bankruptcy, he and the truſtee aſſign it to a perſon who has notice of the bankruptcy; could this court interpoſe againſt ſuch innocent aſſignee? And ſuppoſing that the plaintiffs are without remedy at law, though I do not ſee why they ſhould, ſince they are inveſted with all the bankrupt's right as debtors and creditors, yet I apprehend that becauſe they have no remedy there, *ergo*, they muſt have it here, is a *non ſequitur*. I have no occaſion to give any opinion on the clauſe in the ſtatute. The bill muſt be diſmiſſed. *April*

24,

24, 1758, in Chan. before Lord *Henley*. *Aſſignees of Bellamy* againſt *the aſſignees of Hoxton, Swan and Blackburn.*

Note, the lord keeper was inclined to think, that the plaintiffs might bring an action of trover againſt the aſſignees, and lay the converſion in the bankrupt; but Mr. *A. G.* and Mr. *W.* ſaid that trover could not be brought againſt aſſignees. Therefore quere? Mr. *S. G.* ſaid that an action of trover lay not againſt an executor on the converſion of the teſtator.

258. On motion of Mr. *Thompſon* to make a rule at *Guildhall*, a rule of court, it was ſaid by *Hales*, chief juſtice, and the court, that by payment by a debtor of a bankrupt to himſelf or to his creditors, before notice of bankruptcy, and before the commiſſion ſued forth, is a diſcharge againſt the commiſſioners and their aſſignees. Quere of payment after taking out or teſt of the commiſſion, and before notice? *Inter Garrard* and *Langſton*, *Mich.* 24, *Car.* II. and he was diſcharged accordingly.

Stover and *Haſtings*, 2 *Keb.* 298, *Eaſt.* 26 *Car.* II.

Ex motione Strond, to accept common bail in debt againſt the defendant (by the aſſignee of commiſſioners of bankrupt) who bought goods before notice of bankruptcy. The court ſaid, that the commiſſioners meddle not with goods, being only bound by execution but with the buyer for the money; and the court conceived they could not have both money and goods; and the ſale on the judgment was precedent to the commiſſion taken out; yet being between father and ſon, ſpecial bail was ordered, and payment by debtor to bankrupt before notice, if no commiſſion is ſued out, is good; and the commiſſioners have no remedy. 3 *Keb.* 290. 25 *Car.* II. *Grove* againſt *Smith.*

259. The ſum of nine hundred pounds, being a legacy left *Rodbear*'s wife, was upon his marriage veſted in truſtees to pay the intereſt to *Rodbear* for

life; then to his wife for life; and after both their deaths to their children. *Rodbear* borrowed of the truſtees three hundred pounds, and after ſome time paid them two hundred and ſix pounds, and afterwards became a bankrupt. The aſſignees bring their bill to have the intereſt of this two hundred and ſix pounds paid to them by the truſtees for the uſe of the creditors. The defendants inſiſted that the aſſignees ought to pay them the whole ninety-four pounds remaining in the bankrupt's hands before they could be entitled to receive any part of the intereſt; and it was agreed on all hands, that if the bankrupt himſelf had brought the bill, he could not have the intereſt without firſt paying the ninety-four pounds. The defendants inſiſted, that as the aſſignee ſtood in the place of the bankrupt, they could have no other relief than he himſelf might have had.

Lord chancellor ſaid, the clauſe in the act of parliament for ſetting one debt againſt another when there was an account depending, extended only to ſuch as were due at the time of the bankruptcy; that aſſignees did not always ſtand exactly in the ſame place as the bankrupt, though they did in ſeveral caſes; as where a legacy is given to the bankrupt's wife, there the aſſignees cannot receive that legacy without doing what the bankrupt himſelf muſt be obliged to do; that is to make a ſettlement upon the wife of it. In ſome caſes they ſtand on different footings; as where, under the commiſſion, all debts come in equally though they affect the bankrupt himſelf one before another; and was of opinion that the aſſignees were entitled to receive the intereſt of the two hundred and ſix pounds without firſt paying the ninety-four pounds.

In this caſe there was a joint commiſſion taken out againſt *Rodbear* and his partner; and lord chancellor ſaid, that if this ninety-four pounds was a ſeparate debt, the truſtees would be entitled to retain the intereſt, unleſs the ninety-four pounds was paid: and gave directions, that if the aſſignment was of the ſeparate eſtate,

eſtate, the intereſt was to be paid; but if it was an aſſignment of the joint eſtate, the bill to be diſmiſmiſſed without coſts on either ſide, but if the aſſignees brought a new bill, with liberty to apply for their coſts of this ſuit. In Chan. 20 *June*, 1735. *Pattindon* v. *Micho*.

260. In *May*, 1735, a commiſſion of bankruptcy iſſued againſt *William Kell*, by the deſcription of *William Kell*, late of *London*, merchant; and he was duly found a bankrupt, and ſubmitted to the ſtatutes, and finiſhed his laſt examination, but never obtained his certificate under ſuch commiſſion.

Afterwards *Kell* ſet up the trade of a diſtiller at a place called *Braywicke*, near *Maidenhead* in *Berkſhire*; and *Aſhley* having contracted an acquaintance with *Kell*, on the firſt day of *Auguſt*, 1741, he entered into co-partnerſhip with *Kell* to carry on the trade of diſtilling and rectifying melaſſes ſpirits, for the ſpace of five years, or thereabouts; and during this co-partnerſhip, *Aſhley* took off all, or moſt, of the ſpirits which *Kell* diſtilled.

Afterwards ſome diſputes ariſing between *Aſhley* and *Kell*, and *Kell* being debtor to *Aſhley* on a ſeparate account, excluſive of the partnerſhip, *Aſhley*, on the ſecond of *July*, 1742, took out a ſecond commiſſion againſt *Kell*, and was choſe ſole aſſignee of his eſtate and effects; but *Kell* having, in all reſpects, ſubmitted to the ſtatutes relating to bankrupts, *Aſhley* and the reſt of *Kell*'s creditors, ſigned his certificate under the ſecond commiſſion, which was duly confirmed and enrolled; and *Aſhley* ſold back to *Kell* ſeveral parcels of his houſhold goods, and part of his ſtock in trade as a diſtiller; for part of which goods *Kell* paid *Aſhley* in money, and for the remainder, amounting in value to the ſum of one hundred pounds, or thereabouts, *Kell* gave *Aſhley* a bond for one hundred pounds, dated on the twenty-eighth of *October*, 1742, payable with intereſt in ſix months, at five pounds *per cent.* and *Aſhley* promiſed to deal with *Kell* afterwards.

Then *Kell* ſet up again the trade of a diſtiller on his own account; and *Aſhley* dealt with him and paid him, for two parcels of ſpirits, after the rate of four ſhillings *per* gallon, to the amount of the ſum of eighty-eight pounds, ſixteen ſhillings.

On the fourth and twenty-eighth days of *April*, 1743, *Kell* ſent *Aſhley* two other parcels of ſpirits, at the ſame price, amounting to one hundred and eighty-four pounds, four ſhillings; and *Kell*'s bond of one hundred pounds being then due to *Aſhley*, and *Kell* not being willing that his bond ſhould be out againſt him, he deſired *Aſhley* to pay himſelf out of the goods the bond and intereſt due to him, and only give him the ballance for the ſpirits. But inſtead of ſo doing, *Aſhley*, in *Eaſter* term, 1743, brings an action againſt *Kell* for the one hundred pounds and intereſt due on the bond, and holds *Kell* to bail; and at the ſame time, the meſſenger under the commiſſion, ſeizes the ſpirits, amounting to one hundred and eighty-four pounds, four ſhillings, as aſſignee under the ſecond commiſſion; and by virtue of 5 *Geo.* II. *cap.* 30, ſect. 9, which ſee in paragraph 90.

Aſhley proceeded in his action, and *Kell*, by way of ſet off to the debt, pleaded, that before the bringing of this action, *Aſhley* was indebted to him in a much larger ſum; to wit, in one hundred and eighty-four pounds, four ſhillings, for goods ſold and delivered; out of which ſum *Kell* was willing to allow the principal and intereſt due to *Aſhley* on his bond; and upon this iſſue was joined.

Pending this action, *Kell* fi'ed a bill in Chancery againſt *Aſhley*, and prayed that *Aſhley* might diſcover whether he had not agreed to purchaſe ſuch goods of him; and if ſuch goods did not come to his poſſeſſion; and to be relieved in ſeveral other matters complained of in ſuch bill, and that *Aſhley* might be enjoined from proceeding in ſuch action.

To this bill *Aſhley* put in his anſwer; in which he denied the ſpirits were ever ſold to him, or that he ever promiſed to pay for them: and he inſiſted upon his right of retaining them as aſſignee under the ſecond commiſſion, by virtue of the above-mentioned clauſe; *Kell*'s effects under the ſecond commiſſion not amounting to pay fifteen ſhillings in the pound: but whether ſuch goods were or were not rightfully ſeized, he was adviſed, was a matter to be tried at law, where *Kell*, if at all, had his remedy; and the court did not think proper to grant an injunction, but ſent the parties to law; and then *Aſhley* proceeded in the cauſe: and on the thirtieth of *November*, 1743, the cauſe was tried before the lord chief juſtice *Lee*, at *Guildhall*, *London*.

Upon the argument of this caſe, it was inſiſted by the gentlemen who were counſel for *Aſhley*, that theſe goods were not the property of *Kell*, and therefore that he could not ſell them; but that they came to *Aſhley*, as truſtee, under the ſecond commiſſion.

That this was the firſt inſtance of a bankrupt coming in this manner againſt his aſſignee, and the common way was, to bring an action of trover for the goods; and the queſtion then would be, where the property lay?

That *Aſhley* had the ſpirits, but not as a buyer; and that by this clauſe, *Kell*'s future effects were liable, he not having paid fifteen ſhillings in the pound; and conſequently, that the goods belonged to the aſſignee either under the firſt or ſecond commiſſion.

But by the gentlemen who were counſel for *Kell*, it was inſiſted, that *Kell* was never diſcharged by the ſtat. 5 *Geo.* II. after the twenty-fourth of *June*, 1732, except by the laſt commiſſion; and therefore could not poſſibly be within the intent of that clauſe, having but once had the benefit of that act.

That ſuppoſing *Kell*'s future effects had been liable to his creditors by the above clauſe, that *Aſhley* could

not in any manner ſeize them as aſſignee under the ſecond commiſſion; and if he had a right, he muſt have proceeded in a legal way, and have brought his action againſt *Kell*, and then *Kell* muſt have pleaded his certificate in diſcharge of his perſon, and let *Aſhley* have taken judgment againſt his goods, as in the caſe of an inſolvent debtor; but that this was by no means *Kell*'s caſe, he not being within the meaning of the clauſe of the act, as having but once had relief.

And his lordſhip, after having ſtated the caſe, and ſummed up the evidence to the jury, was clearly of the ſame opinion with the gentlemen who were counſel for *Kell*, that *Kell*'s caſe was not within the intent and meaning of that clauſe, and that the taking of the goods by *Aſhley*, as aſſignee, was illegal, and the jury concurring with his lordſhip, found the plea of the defendant, *Kell*, to be true, as was alledged; and therefore gave a verdict for him.

But the lord chief juſtice gave *Aſhley* leave to move, if he thought proper, in arreſt of judgment within ſix days of *Hiliary* term then next; and *Aſhley* not moving in arreſt of judgment in all *Hillary* term, the lord chief juſtice ordered the poſtea to be delivered to the defendant *Kell*'s attorney, who thereupon taxed the coſts at thirty pounds, and took out execution againſt *Aſhley* for ſuch coſts, which *Aſhley* paid *Kell*'s attorney.

And after *Aſhley* had paid *Kell*'s coſts, in *Eaſter* term, 1744, *Aſhley* moved in arreſt of judgment, and a rule was made for *Kell*'s attorney to attend with the poſtea.

And upon the argument of this caſe before the court of King's Bench, the very ſame arguments were made uſe of by the counſel for the plaintiff and defendant, as were made uſe of at the trial of the cauſe: but the whole court were of opinion, that the verdict was right, and entirely concurred with the

the lord chief juſtice *Lee* in his judgment; and therefore they diſcharged the plaintiff's rule. And in *Trinity* term, 1744, *Kell* brought an action in the court of Common Pleas, againſt *Aſhley*, for the ballance of the ſum of one hundred and eighty-four pounds, four ſhillings, due for the ſpirits.

And on the twenty-third of *June*, 1744, the cauſe was tried at *Guildhall*, *London*, before the lord chief juſtice *Lee* at the firſt trial, and before the court of King's Bench on the ſpecial argument of this caſe: but the lord chief juſtice *Willes*, upon the ſtating the caſe, and fully ſumming up the evidence to the jury, was clearly of the ſame opinion with the lord chief juſtice *Lee* and the court of King's Bench; and was pleaſed to make this obſervation; *viz.* that by the very clauſe in the act of parliament, the effects of a bankrupt that had received the benefit of the act, according to that clauſe, remained liable to his, or her creditors, as before the making of the act: but that it could never be ſuppoſed that they were liable to be ſeized in a ſummary way, without a legal trial, by an aſſignee, becauſe nothing was veſted in the aſſignee, but what the bankrupt had before he was a bankrupt; and *Kell* had not received the benefit of the act. And the jury being of the ſame opinion, they therefore gave a verdict in this action for the plaintiff *Kell*, for fifty-four pounds eighteen ſhillings, beſides coſts of ſuit; being what was proved to be the value of the ſpirits, after ſome allowances were made for waſte and leakage, after the bond of one hundred pounds and intereſt was paid by *Kell* to *Aſhley*. Between *James Aſhley*, plaintiff, and *William Kell* defendant; and between *William Kell* plaintiff, and *James Aſhley* defendant. *Eaſter and Trinity*, 1744. *Dav.* 515.

261. *W R*, by his will, gave to his wife for life all his lands, *&c.* and after her deceaſe to his daughter, *Elizabeth Watkinſon*, for her life; remainder to *B S* and *J S*, and their heirs, in truſt, to ſell the premiſſes and to pay the money ariſing by ſuch ſale to

the children of his ſaid daughter *Elizabeth*, that ſhould be living at her death.

The teſtator died in 1720. The wife entered and enjoyed till 1726. *Elizabeth*, the daughter, entered and enjoyed till 1729, and then died. In 1726, a commiſſion of bankruptcy iſſued againſt *William Watkinſon*, the defendant, only ſon of *Elizabeth*; and the commiſſioners aſſigned his eſtate; and, in 1728, he had his certificate.

The queſtion was, Whether the reverſionary intereſt of *William Watkinſon* was ſufficient to entitle the aſſignees to it, when it ſhould come to poſſeſſion?

Yorke, attorney general, inſiſted, that as it was ſuch an intereſt as the bankrupt himſelf might diſpoſe of, the aſſignees were entitled to it under the ſtatute of *Hen.* VIII. and queen *Eliz.* which give the commiſſioners power to aſſign all ſuch intereſts as bankrupt could have lawfully diſpoſed of. *See paragraph* 6. 21 *James* I. ſays, the ſtatutes already made ſhall be conſtrued largely for the benefit of the creditors. *See paragraph* 34.

That the aſſignees have the ſame liberty, right, and benefit of performing any covenants as the bankrupt himſelf had; and that there were ſeveral caſes in Serjeant *Goodwin*'s book to that purpoſe.

That the word *lawfully* ſhall include equitable as well as legal intereſts.

That there was a caſe to this purpoſe determined by the maſter of the rolls, lord chancellor, and houſe of lords; which was that of *Theobald* and *Duſay*, 1 *Vern.* 7. where *A*, poſſeſſed of a term, deviſed it to his wife for life, remainder to his two daughters and their aſſigns for the reſidue.

The huſband of one of the daughters aſſigned his intereſt to *Theobald*, in the life-time of the teſtator's wife, which was held to be good againſt his wife.

That aſſignees are entitled to a bond due to the wife while ſhe was ſole, becauſe the huſband might have diſpoſed of it by releaſe; and therefore, as the bank-

rupt

rupt might have diſpoſed of this intereſt, he hoped the aſſignees were well entitled to it.

Note, this caſe came to be reheard before the lord chancellor, from a decree of the maſter of the rolls for the aſſignees, and was affirmed. *Dict. Tr. and Com. Tit. Bankrupts. Mich.* 6 *Geo.* II. in Chan. *Higden* v. *Watkinſon.*

262. A commiſſion of bankruptcy iſſued againſt *Stephen Evans* about thirty years ago, and ſome time ſince it was diſcovered that the bankrupt had a much better eſtate than what was ſufficient to pay all his debts; and now the queſtion was, Whether the creditors ſhall be allowed intereſt for their debts out of the ſurplus?

It was argued for the repreſentatives of the bankrupt, that the debt claimed being proved and allowed, is afterwards like a judgment, which ſhall never carry intereſt for the money adjudged; and that the bankrupt, in this caſe having obtained his certificate, the ſurplus, after payment of the debts proved, ought to be paid over to the repreſentatives of the bankrupt, without any deduction being made for the intereſt of the debts proved.

For the creditors, it was argued, That the ſurplus eſtate now in queſtion, is not an eſtate acquired by the bankrupt after obtaining his certificate; but is part of the eſtate originally aſſigned over by the commiſſioners to the aſſignees.

That the creditors have as much right to be paid intereſt for their debts, as they have to be paid their principal.

That intereſt money is the common damages for detaining of money, and is but as the fruit of the branch.

That the bankrupt's certificate in the preſent caſe was only obtained by the bankrupt from the commiſſioners, and was not confirmed by the chancellor till after the bankrupt's death.

Lord *Hardwicke*, chancellor, obſerved, That this queſtion had come before him upon a petition; but that

that he had directed a bill to be brought in reſpect that, if he had determined it then, no appeal would lie from his determination, as it now does, being brought in queſtion in a cauſe in court.

As to the certificate, he declared that he thought the ſame valid, though not confirmed till after the bankrupt's death; for the privileges ariſing from it are of ſuch a nature, that the repreſentatives of the bankrupt may take advantage of them, as well as the bankrupt himſelf. That the certificate is to be conſidered in the nature of a releaſe, its force ariſing from the conſent of the creditors.

It has been objected, on the ſide of the repreſentatives, that they ought not to be bound by the proof made by the creditors before the commiſſioners, which is a proof only upon their own oaths; but I think that after the great length of time, they ought to be bound by that. The oath of the party is always, in caſes of this kind, allowed in the firſt inſtance as ſufficient to prove the debt claimed; and though they may be controverted before the commiſſioners, and the great ſeal may be applied to, to have an enquiry directed; yet ſuch applications or objections are to be made in a reaſonable time. The commiſſion may be proceeded in, or renewed, notwithſtanding the death of the bankrupt.

Then, as to the main queſtion, he decreed, That the ſeveral creditors ſhall be paid intereſt for their debts before the ſurplus is paid over by the aſſignees to the repreſentatives of the bankrupt; but that the bond-creditors ſhall not be paid intereſt added to their debts beyond the ſpecialties of their bonds, 1 *Ver.* 350.

The commiſſioners have a mixed right of juriſdiction, legal and equitable, to be exerciſed by a ſound diſcretion; and all the ſtatutes plainly imply this, and particularly the ſtatute of the 13th of *Eliz.*

The commiſſioner at firſt, always preſume a failing fund; but when the contrary happens, intereſt is to be

be conſidered as part of the debt; it is a kind of penalty for non-payment. The whole eſtate of the bankrupt is veſted in the aſſignees for payment of the debts.

To ſay intereſt ought not to be paid, would be to diſcharge the fund before the debt paid.

It has been argued that, as the eſtate ceaſes to carry intereſt, no intereſt ought to be charged on it: but this argument is fallacious. Suppoſe the eſtate ſhall produce intereſt, ſhall ſuch intereſt be paid over to the bankrupt before the creditors are fully paid? The words veſting the bankrupt's eſtate in the commiſſioners; *viz. all that the bankrupt may lawfully part with*, includes, eſtates tail which the bankrupt may lawfully part withal by recovery; and that the ſtatute enabling the commiſſioners to diſpoſe of eſtates tail in the bankrupt, is to be underſtood of eſtates tail in him, where there is a precedent eſtate for life which eſtates tail, by reaſon of the precedent eſtate for life, the bankrupt could not part with; nor the commiſſioners, nor aſſignees before the ſtatute. *Dict. Tr. & Com. Tit. Bank. Bromley* v. *Child.*

263. In the year 1726, *Edward Stephens*, late of *London*, merchant, lived at *Rotterdam*, in *Holland*, and at that time was juſtly indebted to *Burton* in one thouſand, ſeven hundred, and eighty two pounds, five ſhillings, and nine pence, for goods ſent and conſigned to him, and for monies paid by *Burton* on bills of exchange and otherwiſe; and in the ſaid year *Stephens* failed, and compounded his debts, according to the laws and cuſtoms of *Holland*; and *Burton* received a compoſition for his debt with the reſt of *Stephens*'s creditors.

In 1732, *Stephens* came to *England*, and applied to *Burton* to lend him money, and to become ſecurity for him to the *African* company of *England*, *Stephens* being appointed their governor to *Cape Coaſt Caſtle* in *Guinea*; and *Stephens*, in conſideration of his lending him money, and being ſecurity for him to the

African

African company, aforeſaid, offered *Burton* to give him a bond to pay him ſuch money, as he ſhould ſo lend him, and alſo the reſidue of the money he owed him at the time of his failure in *Rotterdam*.

And upon this conſideration, *Burton* lent *Stephens* two hundred and forty pounds, and became ſecurity for him to the *African* company in the ſum of three thouſand pounds; and on the ſeventeenth of *June*, 1732, *Stephens* gave a bond to *Burton* for one thouſand, nine hundred pounds, with intereſt at four pounds *per cent.* on the eighteenth of *June*, 1733; and alſo a warrant of attorney to confeſs judgment thereon: and accordingly *Stephens* went governor to *Cape Coaſt Caſtle*, in the ſerv ce of the *African* company.

In 1737, *Stephens* returned from *Africa* to *England*, and ſoon after paid *Burton* four hundred pounds in part of the principal ſum due on his bond, and all the intereſt due on the ſame home to that time; and *Stephens* alledging to *Burton* that he could not then pay the remainder of the debt, *Burton* gave *Stephens* a defeaſance on the judgment obtained on the bond to pay him one thouſand, five hundred pounds, on the ſecond of *November*, 1749.

On the fifth of *March*, 1741, afterwards, *Stephens* carried on a conſiderable trade to *Briſtol*, and contracted ſeveral debts; and on the fifth of *March*, 1741, a commiſſion of bankruptcy iſſued out againſt *Stephens*, and he was duly found bankrupt; and in *May*, 1742, *Burton* attended the commiſſioners and offered to prove his debt; but an objection being made to the proving of the ſaid debt, by Mr. *Udney*, the aſſignee, it was propoſed that the caſe between them ſhould be referred to the opinion of counſel to ſettle the ſame; but the ſame being dubious, or the parties, as I apprehend, being adviſed not to ſettle the ſame without the direction of the lord chancellor, it was agreed that the matter ſhould come before the court for his lordſhips direction therein.

And

And on the 26th of *June*, 1744, *Burton* preferred his petition to the lord chancellor, ſetting forth the ſubſtance of the matters abovementioned, and by ſuch petition he prayed his lordſhip, that he might be allowed to prove his debt, and be paid his dividend out of *Stephens* the bankrupt's eſtate, or that his lordſhip would make ſuch order as to him ſhould ſeem proper; and on the coming on of this petition in *July* following, the ſame was by conſent adjourned over to the 26th day of *October*, 1744, on which day this petition came on to be heard before his lordſhip; and by the gentlemen, who were counſel for the petitioner, Mr. *Burton*, in was inſiſted,

Firſt, That this debt was raiſed upon a valuable conſideration, and for a debt that was originally, fairly, and juſtly due.

Secondly, That by the laws of *Holland*, and which where the ſame, in ſeveral reſpects, with the old *Roman* law, the future eſtate and effects of a perſon, who failed in *Holland*, notwithſtanding his perſon was cleared upon delivering up all his eſtate and effects to his creditors, were liable to make good his debts to his creditors.

And the following caſe was cited out of the ſeventh book of the *Code* of *Juſtinian*, to. 255, under the title of *De effectu ceſſionis*, i. e. of the conſequence of delivering up effects.

Qui bonis ceſſerint, niſi ſolidum creditor receperit, non ſunt liberati; in eo enim tantummodo hoc beneficium eis prodeſt ne judicati detrahantur in carcerem.

They that deliver up their goods are not freed unleſs the creditor receives the whole; but they have this benefit ariſing to them, that they ſhall not be thrown into priſon.

And the opinion of an eminent civilian in *Amſterdam* was cited, and is as follows.

" I, the underwritten, doctor of laws and advocate " practiſing in the city of *Amſterdam*, do hereby cer- " tify, that, according to the laws of this place,

" when

" when any perſon fails, or becomes bankrupt, " and by making an aſſignment of his eſtate, or " an agreement is reinſtated, he is ſtill bound, in " caſe he comes to a better fortune of eſtate, fully " to ſatisfy his creditors, bringing in an account " of whatever he has ſo aſſigned over, which by the " ſovereign council of *Holland*, in the name of the " ſupreme court, will be allowed, as being likewiſe " an expreſs order; with this proviſo, however, " that he cannot be called to any court of juſ- " tice on that account, unleſs there be good and " ſufficient proof againſt him, that he has bettered " his fortune of eſtate.

" Done in *Amſterdam*, this 19th day of *Auguſt*, 1744.

" *H. Noord Real.*"

Thirdly, That this was not a debt barred by the ſtatute of limitations; and that *Stephens* could, if he thoupht proper, add or tack the old debt, which remained unſatisfied to the new debt contracted by him.

But on the behalf of the creditors and aſſignees, it was inſiſted, that this debt of one thouſand five hundred pounds was a *voluntier*, and was given by way of inducement to *Burton* to lend him two hundred and forty pounds, and to be his ſecurity to the *African* company; that for this two hundred and forty pounds, ſo lent him, he had actually received four hnndred pounds, and all intereſt due on the old debt, and that it was given without any conſideration, but only for being ſuch ſecurity.

That by the laws of *Holland*, and by the *chamber of bankrupts*, as it is there termed, the original debt upon the party's delivering up all his effects, was abſolutely extinguiſhed; and though his future effects were liable to make good the old ſubſiſting debts, in proportion amongſt all his creditors; yet that his perſon was diſcharged, and that his new creditors here in *England* truſted him upon the credit, and believing that he was cleared from his old debts,

and

and that the old re-aſſumed debt, though it might bind *Stephens* himſelf, yet ought not to be prejudicial to his new creditors; for if theſe kinds of claims were to be allowed, new creditors would never be ſafe, after a man had once become inſolvent.

But his lordſhip, upon hearing this caſe, was of opinion, that this was a real and juſt debt, and that there was a good conſideration for giving this bond; and had *Stephens* been able, he ought, in conſcience and juſtice, to have made it good, and that before the ſtatute of 4 and 5 *Ann.* which gave the bankrupt his certificate on conforming, and which ſtatute was made after two wars brought great loſſes on the ſubject, the perſon and future effects of a bankrupt were liable to make good his whole debts to his creditors.

That by the act for the relief of inſolvent debtors, though the perſon of the bankrupt was freed from arreſts, and he and his family were intitled to their neceſſary wearing apparel, and he to the tools of his trade, to the amount of ten pounds, yet, that his future effects, if he attained any, were liable to his creditors; and that *Stephens*, if he thought proper, had a right to give a new ſecurity for the old debt; and for theſe, amongſt other reaſons then given by his lordſhip, he was pleaſed to make the following order, *viz.*

That the petitioner *Burton* ſhould be at liberty to go before the major part of the commiſſioners named in the ſaid commiſſion, to prove his debt before them; and that he ſhould be admitted a creditor under the commiſſion for what he ſhould ſo prove, and be paid out of the bankrupt's eſtate now remaining in, or which thereafter ſhould come to the hands of the aſſignees under the ſaid commiſſion, a dividend or dividends in reſpect thereof, rateably to what had been already paid to the other creditors of the ſaid bankrupt, in reſpect of their debts,

before

before any other dividend be made; but ſo as not to diſturb any dividend already made, and that in all further dividends, the petitioner ſhall be paid, in reſpect of his ſaid debt, rateably and in equal proportion with the reſt of the creditors of the bankrupt, ſeeking relief under the ſaid commiſſion. *Dav.* 537. In the matter of *Edward Stephens*, a bankrupt, before Lord *Hardwicke*, the 26th of *October*, 1744.

264. In ejectment, ſpecial verdict finds that Sir *John Harriſon*, being ſeiſed, became a bankrupt, and in 1644, 45, 46, and 49, at the ſuit of three perſons, was outlawed; and in 1648, Sir *John Harriſon* ſold to the leſſor of the plaintiff, *bona fide*; and the jury have not found that he was outlawed in 1645, *in fraudem creditorum*, and to that intent; which, by *Wild*, ſerjeant for the plaintiff, is neceſſary; for otherwiſe a man ſhall not be a bankrupt. Alſo the parties ought to have notice of his outlawry; alſo, admitting both times, 45 and 46, the laſt whereof is ſeven years before the ſuing out of the commiſſion, which was not till 1653.

Newdigate, for the defendant, that the bankrupt Sir *John Harriſon* is within the act 21 *Jac. cap.* 5. for the ſale by Sir *John Harriſon* in 1648 was within five years, which is ſufficient to bring him within it. 13 *Eliz. cap.* 4. *the eſtate of perſons in debt to the king is ſubject from the time of the debt due*, which is like to the ſtatute of 21 *Jac.* 2 *Co.* 55, 26. *F. N. B.* 150. *Q.* The ſecond reaſon is, that the creditor's title is *eign* (or prior) to the purchaſer's, and are firſt provided for by all the laws of bankrupts, being (*Com.* 51. 1 *Co.* 131) for the advancement of trade, and ſhall be beneficially taken. It is in the creditor's election, as the caſe is, to take out a commiſſion when they will; for the proviſo being to take off the benefit of former laws, is like the ſtatute of limitations, which ſhall be ſo, as 4 *H.* VII. (*Com.* 379. 3 *Co.* 79.) of entry; and may be within five years,

or

or after; and Sir *John Lake*'s caſe, *C. B.* 4 *Car.* I, in battery of his ſervant, the plaintiff ſhall recover for any battery, within ſix years before the action; and ſo 1 *Cro.* 139.

A fourth reaſon. This ſtatute is to bar rights which are like diſtinctive conditions, (8 *Co.* 90.) which ſhall be taken ſtrictly; and ſo if the bankrupt ſell his lands within the five years, that ſhall ſave the creditors to five years after; elſe the ſooneſt bankrupt is in the beſt condition, which is an inconvenience; for he might as well have purchaſed a day after he became a bankrupt. 1 *Cro.* 49.

A fifth reaſon. The ſtatutes of bankruptcy by expreſs proviſo, are to be conſtrued beneficially, 1 *Cro.* 568. and though the firſt act of a bankrupt doth intitle the creditors, yet they are only bound by five years after notice of ſuch act; nor doth the purchaſer incur any other hazard, than he that buyeth a defective title; but the creditors can have no other remedy than this for their money. *Mich.* 1655, in *C. B. Rot.* 484. *Jolliff* verſus *Horne*, a grazier, copyholder in fee, 10th of *May*, 1643, became a bankrupt, and in 1649 became a bankrupt again; and in 1652 he doth ſell on a commiſſion in 1651, which was ten years after the firſt cauſe of bankruptcy. After argument at bar and bench, adjudged for the creditors, that they had a good title againſt the purchaſers.

Per Curiam. The proviſo is expreſs, that the commiſſion muſt be ſued within five years, after ſome time when he became a bankrupt; and his being ſo after the ſale, that will not hinder, if the commiſſion be not ſued within five years of his becoming a bankrupt, and then they can only defeat all ſales made within the five years, but not afterwards; and upon this ground was the judgment aforeſaid in *C. B.* for that point was, whether if a man continue bankrupt twenty years, he is always liable, or no? which was adjudged for the plaintiffs by all the

court, *Niſi, &c.* 1 *Keb.* 11. *Bradford* v. *Bloodworth.*

265. A commiſſion of bankruptcy was taken out againſt one *Hughes*, and upon the 9th of *Feb* 1730, at eleven o'clock in the morning, the commiſſioners met, and proceeded to declare him a bankrupt; and the declaration was ſigned by them between three and four o'clock in the afternoon, and the aſſignment of the bankrupt's goods executed at ſix, at which inſtant the commiſſioners had notice, that the bankrupt died that day at one in the afternoon, which was the firſt notice they had of his death. The bankrupt having before his death delivered all his real and perſonal eſtate for the payment of his debts, the plaintiff, who was a creditor, brought his bill againſt the defendant, as aſſignee under the commiſſion, for an account of ſuch goods of the bankrupt's as had come to his hands; to which the defendant pleaded the commiſſion, and the proceedings under it.

The queſtion was, Whether this was ſuch a dealing under the commiſſion as was within the 1 *Jac.* I. *cap.* 15. *ſect.* 17. the words whereof are, "That "where, after any commiſſion of bankruptcy is *dealt* "in by the commiſſioners, the offender happen to die "before diſtribution, that nevertheleſs they may in "that caſe proceed in the execution of the commiſ-"ſion, in ſuch ſort as they might have done if the "offender was living."

Mr. attorney general, Mr. *Fazakerley*, and Mr. *Forreſter*, argued for the defendant, that the meeting in order to declare him a bankrupt, was a ſufficient *dealing* within the ſtatute, and that the aſſignment hath relation to the bankruptcy; that when the commiſſioners aſſign, it is from the act of parliament, and not from themſelves; for they have no intereſt veſted in them; but it is the operation of the act, which gives them right in the thing, but none at all in the perſon of the bankrupt; ſo that his death

death cannot be material; and the law gives no right over the perſon, but only a power of calling him a bankrupt, it muſt be in purſuance of the commiſſion, and therefore that examination was a *dealing* within the ſtatute; that by law there can be no ſplitting a day, as a leaſe made to commence from henceforth, takes in the day of the date, altho' executed at the very laſt moment. And in *Shelly*'s caſe, 1 *Co.* 93, the recovery was held good, although the party died the ſame day, becauſe it was a legal proceeding. That the laws againſt bankrupts were not at all to be conſidered as penal, but as remedial laws, and as ſuch were intitled to the moſt favourable conſtruction, according to the rule laid down in *Heydon*'s caſe, 3 *Co.* 7, and therefore, if any conſtruction could be made more beneficial for the creditors, than another, that one was to be admitted, as founded upon natural juſtice, and upon that beſt of rules, *jus ſuum cuique tribuere*, that in theſe caſes the law itſelf hath provided how it ſhall be conſtrued, for by 21 *Jac.* I. *cap.* 19. *ſect.* 1. it is enacted, that all the ſtatutes which were made heretofore againſt bankrupts, and for the relief of creditors, ſhall be in all things beneficially conſtrued for the relief of the creditors of the bankrupts; ſo that the law itſelf directs a beneficial conſtruction to be made for the creditors; and when a law does, by expreſs proviſion, enact how conſtruction ſhall be made, the clauſe, ſo directive of conſtruction, is of the ſame force and authority as any other part of the law.

Mr. ſollicitor general and Mr. *Brown* argued on the other hand, that thoſe laws were rather penal than remedial, the party therein being called an offender, *&c.* which he does not appear to be until he is declared a bankrupt, and that declaration is the *dealing* meant by the ſtatute; for till then there can be no proceeding upon the commiſſion, properly ſo called. *Shelly*'s caſe is quite different; for recoveries being common aſſurances, the law favours them, and

does not enter into any enquiries about the particular minute of the day the party died upon. Had this law not been made, the commiſſioners could not have proceeded *after the bankrupt's death*; and the words of the ſtatute ſeem to mean, that he ſhould be declared a bankrupt firſt.

Lord chancellor. The plaintiff, if contented to come in under the commiſſion, will be intitled to the benefit of it; but his intent ſeems to be, to ſet aſide all the words of the ſtatute of 1 *Jac.* I. It looks as if ſome doubt had been conceived, whether the party's death determined the commiſſion; the former ſtatute being, that they ſhould ſeize his body, which they could not do when the party was dead; but it was always clear, that no commiſſion could he taken out againſt a man after his death; then, (whatever might occaſion the doubt) comes this ſtatute, which ſays, that when the commiſſion had been *dealt* in, *&c.* What is a *dealing* in it, is the queſtion.

Indeed, I know no particular act, as diſtinct from another, which can be called a *dealing*. It has been ſaid, that the declaring him a bankrupt was the act meant; but the declaration of the commiſſioners being only diſcretionary, and for caution, and not at all binding to any body, it is not probable, that the act ſhould intend that only to be a dealing, which it hath not any where given the commiſſioners power to do: whatever is done in purſuance of the commiſſion, is *dealing* in it, if never ſo minute. And the rather, for that theſe being remedial laws, are to be beneficially conſtrued in favour of the creditors; I cannot therefore put a narrow conſtrained conſtruction upon the words *dealt in*, in order to overthrow this commiſſion, and all the juſt right of the creditors claiming under it. The plea was allowed. *Lord Talbot's Caſes*, 184. *Hill.* 1735.

266. *A* made a bill of ſale of ſome leaſes and perſonal eſtate to *B* and *C*, in truſt to pay *A*'s debts. At firſt *B* acted in the truſt, but afterwards *C* took the

the whole into his poſſeſſion, and acted alone, and became a bankrupt.

And this bill was brought by *A* againſt *C* and others, to bring *C* and his aſſignees, under the commiſſion of bankruptcy, to an account, touching the perſonal eſtate of *A* ſo aſſigned, in truſt for the payment of his debts, as aforeſaid.

And his lordſhip ordered a clauſe in the ſtatute of 21 *Jac.* I. *ſect.* 10. to be read, which ſee in *paragraph* 43.

But further argument being granted on this caſe, and upon citing ſeveral caſes, it was, among other things, ſaid; Suppoſe a factor who deals in the ſelling of the goods of other people, ſhould become a bankrupt, would it not be a very hard caſe, that by his bankruptcy the goods of other people muſt be loſt, which would have been the conſequence of ſuch a decree.

And therefore his lordſhip held, that the caſe not being within the clauſe of the ſtatute of 21 *Jac.* in regard this aſſignment was with an honeſt intent, *viz.* for the payment of the debts of the aſſignor.

And therefore he ordered the aſſignees of *C* to account for all the eſtate of *A*, which the court declared ſhould not be liable to the bankruptcy of *C*. 1 *P. Will.* 314. *Copeman* v. *Gallant*.

267. The plaintiffs being aſſignees under a ſtatute of bankruptcy againſt the *Bonnells*, brought their bill for a diſcovery and relief, touching two caſes of ſilk, at firſt conſigned by *Altenory* and *Alteory* to the *Bonnells*, then conſiderable merchants in *London*; but before the ſhip ſet ſail from *Leghorn*, news came that the *Bonnells* were failed, and thereupon *Altenory* and *Alteory* alter the conſignment of the ſilks, and conſign them to the defendant.

Upon the firſt hearing, the court ordered all letters, &c. to be produced, and that the parties proceed to a trial in trover, to ſee whether the firſt conſignment, notwithſtanding the altering thereof, and

new conſignment made before the ſhip ſailed, veſted the property of thoſe ſilks in the *Bonnells*; and upon the trial and verdict being given for the plaintiffs, the cauſe now came on upon the equity reſerved.

The court declared, the plaintiffs ought not to have had ſo much as a diſcovery, much leſs any relief in this court, in regard that the ſilks were the goods of the two *Florentines*, and not of the *Bonnells*, nor the produce of their effects; and therefore, they having paid no money for the goods, if the *Italians* could by any means get their goods again into their hands, or prevent their coming into the hands of the bankrupts, it was but lawful for them ſo to do, and very allowable in equity.

And it was ſo ruled in the caſe between *Wigfall* and *Motteux*, and *Hitchcock* and *Sedgwick*, in caſe of a purchaſe without notice of bankruptcy. Therefore decreed, if any thing due from the *Italians* to the *Bonnells*, that ſhould be paid the plaintiffs, but they ſhould not have the value of the ſilks, by virtue of the conſignment or verdict, and put the *Italians* to come in as creditors under the ſtatute of bankruptcy. 2 *Vern.* 203. *Hill.* 1690. *Wiſeman* v. *Vandeput.*

268. This was an action brought by the plaintiffs againſt the defendants, for money had and received to the plaintiffs uſe; and the caſe was as follows.

The plaintiffs being concerned as partners in a large quantity of tar, conſigned it to *Richard Scott*, who was their factor, and brother to one of the plaintiffs, (between which two brothers there had been mutual dealings and accounts, which were at that time unſettled). On *May* 22, 1739, the ſhip arrived in the *Thames* with the goods from *Carolina*, and on the 22d of *March*, 1739, the factor received the bill of lading, and upon the 28th of *March* following, ſold the ſaid tar ſo conſigned to Meſſieurs *Cornelius* and *Jeremiah Owen*; and at the time of the ſale it was agreed, that the ſaid tar ſhould be paid for

for in promiſſory notes, payable in four months after the delivery of the ſaid goods; and that a debt of thirty-one pounds, at that time owing to the buyers, the *Owens*, from the factor upon his own private account, ſhould be deducted out of the purchaſe money.

On the firſt day of *April*, 1740, the *Owens* paid the factor in part, by giving him one promiſſory note of ſixty-ſix pounds, thirteen ſhillings and fourpence, and another of one hundred and two pounds, ſix ſhillings, and eight pence, which, with the thirty-one pounds ſo due to them from the factor, amounted to two hundred pounds.

On the 3d of *April* following, the factor, *Richard Scott*, committed an act of bankruptcy, and on the 5th of the ſaid *April* a commiſſion of bankruptcy iſſued againſt him, on the petition of one of the defendants; and the three defendants were choſen aſſignees under the commiſſion, to whom the ſaid bankrupt delivered up the ſaid two notes, ſo received of the above buyers in part for the tar, and the ſaid aſſignees afterwards received the money for the ſaid notes.

The defendants, as aſſignees, likewiſe confirmed the ſale of the tar to the ſaid *Owens*, and ſettled the account with them, and received the balance of the account, being three hundred and ſeventy-eight pounds, four ſhillings; and there being a bounty allowed by act of parliament, at ſo much *per* ton, payable to the importer of this tar, the defendants, as aſſignees, did alſo receive that bounty, amounting to the ſum of two hundred and ninety-nine pounds, eight ſhillings.

The aſſignees inſiſted, that they as aſſignees, were intitled to all this money, and that the plaintiffs muſt come in as creditors under the commiſſion; and the plaintiffs inſiſted, that the bankrupt being the plaintiffs factor, could be only conſidered as a bare truſtee, and therefore, that the notes delivered

up to them by the bankrupt, though payable to the bankrupt, or order, were the notes of the plaintiffs, and that the defendants receiving the money for thoſe notes, and alſo a remaining part of the money for the tar, and the bounty due to the importers of the tar, they received theſe monies for the uſe of the plaintiffs.

This cauſe was tried by a ſpecial jury, and the damages were computed at three hundred and fifty-eight pounds, ten ſhillings, and a verdict was given for the plaintiffs, ſubject to the opinion of the court, upon this queſtion,

Whether the plaintiffs were intitled to ſuch ſum of three hundred and fifty-eight pounds, ten ſhillings, given by the verdict, or to any, and what part thereof?

And the principal caſes which were cited by the plaintiffs were theſe: the caſe of *Copeman* and *Gallant* the caſe of *Apoſtree* verſus *Le Plaiſtier*, which was tried before Lord *Holt*, where an action of trover was brought againſt an aſſignee in a commiſſion againſt one *Levi*, to whom the plaintiff had delivered ſome diamonds to ſell; and this being a queſtion depending upon the clauſe of 1 *Jac.* 19. *ſect.* 10 and 11. it was made a caſe for the court of King's Bench: and it appearing that the real property of the diamonds belonged to the plaintiff, and that the bankrupt had only a bare authority to ſell them for his uſe; therefore the court were of opinion, they were not liable to his bankruptcy. The caſe of *Burdett* and *Willet* was alſo cited; where in the court of chancery it was decreed, that the factor was only in the nature of a truſtee for his principal, and that delivering goods to him did not alter the property of the real owner. And upon the argument in this caſe, the court took time to conſider of it, and ſome time after gave their judgment for the plaintiffs. *Viz.*

That

That the plaintiffs ſhould be at liberty to enter up their judgment for the debt and coſts, deducting thereout the thirty-one pounds, ten ſhillings, due from the factor to the *Owens*. *Dav.* 458. *Jonathan Scott* and *Francis Richardſon*, againſt *Surman*, *Owen*, and *Crookſhanks* aſſignees of *Scott*. In the Common Pleas, 22 *May*, 1739.

269. Two merchants conſigned bales of ſilk to the defendant, and at the ſame time drew bills of exchange upon the defendant. The plaintiffs honour and pay the bills before the goods arrive. The defendant, before the goods arrive breaks, and the plaintiffs bring their bill, to ſet aſide the conſignment, and to have the goods ſold, and the monies ariſing by ſale paid to them,

Lord chancellor, upon motion, directed the goods to be ſold by a broker, and after deduction of duties, freight, and charges, the monies to be placed out at intereſt, and wait the event of the cauſe. He ſeemed to be of opinion, that goods *in tranſitu* could not be ſold for the benefit of the creditors, though it might have been otherwiſe, had they been received and ſold in market *Overt*. M S Caſes. *May* 24, 1753. *Obert* and others, againſt *Williams*. Before Lord *Hardwicke*.

Defendant *Mico* was general agent of *Watkins*, who was a merchant abroad, and at different times received ſeveral conſignments of goods from him; and was in diſburſe for *Watkins* in a large ſum of money, when *Watkins* became a bankrupt.

Mico, a ſhort time before the bankruptcy, delivers to *Watkins*'s order a large parcel of logwood, which had been conſigned to him by *Watkins* on board of the *Britannia*, and now claims a ſpecific lien on the money produced by ſale of the ſaid logwood.

Two queſtions were made:

Firſt, Whether *Mico* had at any time a ſpecific lien on the ſaid goods?

Secondly,

Secondly, Whether the delivery of theſe goods was not a waver of the ſaid lien, if any ?

The counſel for the plaintiff inſiſted he had a general lien on the ſaid goods, and was accountable only for the ballance, as conſignee ; and that the opinion of the merchants ought to govern in theſe caſes, and cited *Winch* 24.

For the defendant it was inſiſted, that the factor has a lien on the goods for what he has diſburſed on account thereof, ſuch as inſurance, freight, cuſtom, *&c.* and cited *Salk.* 160. 2 *Vern.* 638 ; but no general lien. *Ex parte Ockenden* it was determined, he could only retain for the corn ground. Cited 2 *Vern.* 117. *Raym.* 270. *Prec. Chan.* 580. 3 *Will.* 186.

Lord Chancellor. He has delivered up his pledge. How can he follow them into the hands of a purchaſer, even for a ſatisfaction for his commiſſion, inſurance, duties, *&c.* which do create a ſpecific lien ?

This is a queſtion of great conſequence to trade in general, therefore proper to ſtand over to hear the opinion of merchants touching it ; for the law and uſage of merchants is the law of the land, and the court in theſe caſes only hear their opinion, and does not examine upon oath. And Meſſieurs *Baker* and *Bethel*, aldermen, and Mr. *Tonnereau*, and another, were to be deſired to attend for that purpoſe.

1 *February*, 1755.

Baker and *Bethell*, aldermen, attended, *Tonnereau* and *Willey* attended, and the chancellor propoſed the following queſtion, *viz.*

If after a conſignment, the factor poſſeſſed himſelf of the goods, and is a creditor, and the principal comes over into *England*, and the factor delivers over to him the ſhip and cargo, and by order of the principal, and by permiſſion of the factor, it is ſold,

and

and the money comes into the hands of the broker, is the ſame liable to the incidental charges only, or to the ballance due on a general account ?

Alderman *Baker* ſaid, he looked upon goods and money to be articles in account, as much as if entered in the books ; but could not give an anſwer to the queſtion, having never met with a caſe where the poſſeſſion was parted with.

The reſt were of the ſame opinion.

Queſtion ſecond. Suppoſe the goods are in the warehouſe of the conſignee, and a broker acts by direction of both, and receives the money, and makes his account with the conſignor ?

Anſwer. Never met with ſuch a caſe.

Lord chancellor. Equality is to be aimed at in caſes of creditors, except there be ſpecific liens. Neither the law nor this court ever ſtretch the lien. It muſt be clear, plain, and certain. All the ſtatutes of bankrupts aim at levelling creditors, and putting them upon a like footing.

There are two queſtions in this caſe.

Firſt, Whether there was originally any lien ?

Secondly, Whether the ſame hath not been parted with ?

As to the firſt queſtion, the merchants all agree in this, that if the merchant abroad conſign to his factor here (with whom he has a general account) the conſignee has a right to retain towards a ſatisfaction, not only of the incidental charges, but alſo of the general account. Whether this has been allowed in trover I cannot ſay, not having met with any ſuch caſe either in experience or in the books. If there was a tender of the charges, *&c.* it might bring this caſe in queſtion at law. In this court it would be conſidered as an *item* of an account, tho' the ſhip and cargo conſiſted in ſpecie.

As to the ſecond queſtion, I am of opinion, the conſignee had parted with the lien : and this conſtruction is moſt for the benefit of trade. It is agreed

agreed by the merchants, that if he delivers up the goods to the principal, he parts with the lien. This is not only the cuſtom of merchants, but the law of the land. If he delivers them up, he neceſſarily parts with his lien. It is a right of retainer, which is here parted with. This determination is ſafer for trade; for *Watkins* has a falſe credit with others, by the public ſales being made in his name. *Hudſon*, the broker, could not have defended himſelf againſt an action brought by *Watkins* againſt him for the money. *Mico*, therefore, has parted with his ſpecific lien, and muſt come in as a creditor under the commiſſion. M S Caſes. 25 *Jan.* 1755. Before Lord *Hardwicke*.

270. One *Watts*, a writing-maſter, and who keeps an academy in *Tower-ſtreet*, borrowed a conſiderable ſum of money of *Farquarſon*, and as a ſecurity, aſſigned to him fifty ſhares in the ſun fire-office, which is a ſociety not inſtituted by parliament, but a voluntary eſtabliſhment; and thoſe ſhares, notwithſtanding the aſſignment, continued in the name of *Watts* in the company's books about five or ſix years. Afterwards *Watts* becomes a trader, by engaging in contracts with the government; and being inſolvent, is declared a bankrupt. And now one queſtion is,

Whether the aſſignment was not fraudulent, as againſt creditors, and within the ſtatute 21 *Jac.* I. and no ways different from the caſe of *Ryal* and *Rolls*.

Lord chancellor. This does not appear to be a caſe within the ſtatute of King *James* I. The object of that ſtatute, both in the preamble and enacting clauſe, are traders; but here it appears that *Watts* was in no kind of trade till five or ſix years after the aſſignment; and cited 3 *Will.* 398. *Cro. Jac.* 549. *Criſpe* verſus *Pratt*. Before Lord *Hardwicke*, in 1755.

271. This

271. This was an action on the caſe for one thouſand pounds, brought by the plaintiff, as aſſignee under the commiſſion of bankruptcy iſſued againſt *Robert Burchall*; and now the matter came to be heard before the court, upon a point reſerved at the *niſi prius*.

The caſe was this:

Robert Burchall, uſing the trade of a ſcrivener, on the twenty-third of *June*, 1740, was arreſted upon a writ returnable in three weeks after *Trinity*, at the ſuit of the plaintiff *Tribe*; and at the return thereof put in ſpecial bail: and being indebted to the defendant, *John Webber*, eſquire, in the ſum of three hundred and ſixty-five pounds, eighteen ſhillings, on the twenty-ſeventh of *January* following, pays him three hundred and forty-ſeven pounds; and on the thirteenth of *April*, 1741, ſurrenders himſelf to priſon, and there remained for three months, by which he became a bankrupt; and in *Auguſt*, 1741, pays *Webber* the further ſum of eighteen pounds, eighteen ſhillings:

And the queſtion was, Whether *Burchall* ſhould be deemed a bankrupt from the time of the arreſt, or only from his ſurrendering himſelf to priſon? If from the time of the arreſt, then both the payments made by him were void; but if from the ſurrender, then the payment was bad, as to the eighteen pounds, eighteen ſhillings.

Mr. Serjeant *Birch*, on the part of the plaintiff, argued that, by the ſtat. of 21 *Jac. cap.* 19, which enumerates the ſeveral acts of bankruptcy, goes on and ſays, *or being arreſted for debt, ſhall, after her or his arreſt, lie in priſon for two months, or more, upon that, or any other arreſt or detention in priſon for debt, or being arreſted for one hundred pounds, or more, ſhall eſcape out of priſon, or procure his enlargement by puting in common or hired bail, ſhall be accounted and adjudged*

judged a bankrupt, to all intents and purpoſes; and in the ſaid caſes of arreſt, or lying in priſon for ſuch debt or debts, or getting forth by common or hired bail from the time of his or her ſaid firſt arreſt:

That the time of bankruptcy, which by the 1ſt *Jac. cap.* 15, was left uncertain, is by this act fully explained to be from the time of the firſt arreſt; that this act was made to remedy the defects of former laws; and if theſe laſt words were to be rejected, the doubt and uncertainty of the former act would ſtill remain; and this would not anſwer the end for which it was made.

By the ſame ſtatute 21 *Jac.* 1, ſect. 1, all acts made againſt bankrupts are to be beneficially expounded for the relief of creditors. *That* will be for the relief of others, which prevents any preference.

Bankrupts are ſuppoſed to be bad perſons; and if bankruptcy ſhould commence only from the time of the ſurrender, it would be in their power to defeat plaintiffs of their debts by putting in bail on the firſt arreſt, and then paying away his effects, as far as they would go, to other creditors in preference to the plaintiff; whereas the act intended an equality. But an arreſt comes on a man unawares; and if the bankruptcy was to commence from thence, it would prevent any intended fraud, and give the bankrupt no opportunity to cheat his creditors.

It will be objected, that an arreſt and giving bail may be private; and, that it would be hard if tradeſmen, who are ſuppoſed not to have notice of it, ſhould be injured by giving him credit after his arreſt: but the reaſon is much ſtronger in other caſes; as where a man denies himſelf to ſome of his creditors, and afterwards appears on the *Exchange*; for that denial is an act which none but thoſe creditors can be preſumed to know; but the arreſt is to be diſcovered by ſearching the judges bail-book, or ſheriff's office.

In *Came* and *Coleman*, *Salk.* 109, it was determined, that bankruptcy muſt be from the time of the firſt arreſt, on which he lies in priſon; and not where he puts in ſpecial bail; for that (the book ſays) would be miſchievous, and no man could pay or receive from a tradeſman.

Tribe's arreſt was the firſt, and he put in bail, and after ſurrendered; on which he becomes as much a priſoner from the arreſt by relation, as if no bail had been put in: for the act does not ſay, that the two months impriſonment ſhall be immediately following the arreſt; neither does it mention any thing of bails.

In the 1ſt *Jac.* I. *cap.* 15, ſect. 14, there is a proviſo, that no debtor ſhall be endangered for the payment of his or their debts, truly, and *bona fide*, to to any bankrupt, before he ſhall underſtand or know that he is a bankrupt.

And by 3 *Keble*, 190, 191, payment to a bankrupt, without notice of bankruptcy, is good.

So that this caſe of *Came* and *Coleman* is not well taken; for the bankrupt may, it is plain, receive, though he cannot pay, after an act of bankruptcy is committed.

The caſe of *Duncomb* and *Walter* is differently reported, 1 *Ventris* 370, from what it is in 3 *Lev.* 57. In the former it is ſaid, that the bankruptcy ſhall not relate to the firſt arreſt, but yielding to priſon. It is there objected, that this relation ſhould not prejudice ſtrangers. But in *Lev.* the queſtion was, Whether the arreſt, being at the ſuit of an executor before probate, was after made good by the probate, and held to be good againſt the bankrupt, but not as to make void the debt paid by *Walter?*

But in *Smith* and *Stacey*'s caſe in *Salkeld*, a chief-juſtice ſaid, he was not ſatisfied with the judgment in *Duncomb* and *Walter*, and inclined that *J S*, was a bankrupt from the time of the firſt arreſt; and not from the render only, and ſaid, that if *H* is arreſted

at

at the ſuit of *A*, and puts in bail, and that pending, is arreſted at the ſuit of *B*, and goes to priſon, and lies two months, he is a bankrupt by the firſt arreſt by *A*.

Mr. Serjeant Willes *for the defendant.*

A bankrupt is a man of broken fortune and credit; and the ſeveral laws which are deſcriptive of bankrupts, ſhew what overt acts ſhall be an evidence of a man being under thoſe circumſtances; as, departing the realm, ſuffering himſelf to be outlawed, arreſted, and lying in priſon two months, *&c.* the queſtion will be, Whether Mr. *Burchall* was in that condition at the time of the arreſt, or not?

He did not ſurrender till ten months after the arreſt, but gave ſpecial bail; therefore his credit was not gone. A bare arreſt is not evidence of bankruptcy, for that may be, and yet nothing may be due, or there may be mutual debts.

A merchant of great fortune may conteſt a policy of inſurance, and to that end might ſuffer himſelf to be arreſted; ſo that it is no evidence of low circumſtances. The ſtatute does not conſider it in that light. *The lying in goal, and not the arreſt, is an argument of poverty.*

It is not right, in general, to prefer one creditor to another; though, in ſome caſes, it may be juſtifiable; but if a perſon ſhould give an undue preference, it would injure himſelf; for then, upon examination, commiſſioners may refuſe to give the bankrupt his certificate.

On the other ſide, greater inconveniencies would happen. If a merchant, worth one hundred thouſand pounds, ſued on a policy for five hundred pounds, giving bail to conteſt the debt; witneſſes go abroad, by which the cauſe is kept from trial for three or four years; and in the mean time, by the loſs of his ſhips, fire, or other unavoidable misfortunes, he is reduced to a low condition, arreſted,

and

and lies in priſon on ſuch laſt arreſt for two months, ſhould be deemed a bankrupt from the time of the firſt arreſt, and all his dealings intermediate be invalid; and if for ten months, why not for ten years?

A man may be arreſted, and others may know it, yet not believe his circumſtances bad; but otherwiſe, if he lies two months in priſon.

The 21ſt *Jac.* I. *cap.* 1, ſays, *or being arreſted for debt, ſhall after lie in priſon two months, or more, upon that, or any other detention, ſhall be adjudged a bankrupt from the firſt arreſt.*

Theſe two months muſt be immediately from the arreſt; otherwiſe the ſtatute would have ſaid, *or being ſurrendered, ſhall lie,* &c.

By the 13th of *Elizabeth, cap.* 7, ſect. 1, a man's yielding himſelf to priſon is an act of bankruptcy, without lying there two months; becauſe it is a confeſſion of inability: but a ſurrender is not ſo: for the act has afterwards given him two months to pay his debts.

There are two acts to make a bankruptcy in this caſe; *viz.* arreſt and lying in priſon. If a man arreſted at the ſuit of *A*, cannot get bail, and goes to goal, and after *B* charges him; *A*, at the end of one month, releaſes him; yet, if he lies another month at the detention of *B*, it ſhall be a bankruptcy from the firſt arreſt.

There are no caſes parallel to this except three.

Came and *Coleman*, *Salkeld* 109.

Duncomb and *Walter*, 1 *Vent.* 370.-----3 *Lev.* 57.

Hill and *Siſh*, *Show*, 512.

Theſe are three uniform caſes uncontradicted. Indeed there is a caſe in *Salkeld*, where it is ſaid, *Holt*, chief juſtice, inclined to think againſt the judgment of *Came* and *Coleman*; but this was an *obiter* ſaying at the *niſi prius*, and he did not determine the caſe, and therefore could have no weight.

As to the words *paying* and *receiving*, in *Came* and *Coleman*, it ſeems to be a *lapſus Calami* of the reporter.

Willes, chief juſtice. There are inconveniencies on both ſides in this caſe; and therefore I was willing to put ſuch a conſtruction upon the act as would occaſion the leaſt miſchief. If the bankruptcy is to have relation to the *firſt*, fraud may be committed in putting in bail; but it would be difficult to obtain the certificate, and ſo the bankrupt himſelf would be injured by it; and a man may do frauds before the arreſt, if he thinks proper.

But, on the other hand, ſuppoſing a man is arreſted, and a great many years after is arreſted and put in priſon, all his dealings in the mean time muſt be void, if the conſtruction of the act, which the plaintiff contends for, be right; for then, if a man puts in bail, he muſt be a bankrupt from the arreſt, though he does not ſurrender himſelf till ſeven years after.

Duncomb and *Walter* is reported in *Levinz*, *Ventris* and *Raymond*.

In the firſt, it is nothing to the purpoſe; the caſe being only, If an arreſt made good by probate, or not?

In *Ventris*, it is ſaid, Bankruptcy ſhall have relation to going to priſon.

In *Raymond*, there are ſome diſcourſes between counſel with an *adjornatur*; but I can pick out no reaſons from them.

In *Shower* there is a ſolemn judgment, caſe in point.

Came and *Coleman* ſays, Bankruptcy ſhall be from the time of the firſt arreſt on which he lies in priſon; and as to the miſchiefs he mentions might happen by paying or receiving from a tradeſman; if it was not

not ſo, it is a miſtake as to the paying; for a man may ſafely pay to a tradeſman before notice of bankruptcy, after act committed, though he cannot receive from him.

As to the caſe of *Smith* and *Tracy*, reported in *Salkeld*, that was only an *obiter* opinion at the *niſi prius*, and there the commiſſion was taken out before the bankruptcy; ſo that there was no determination on that point.

The words in the act, *or ſhall procure his enlargement by putting in any common or hired bail*, are, by 10 *Ann. cap.* 13, ſect. 4, repealed; ſo that now the puting in hired bail is no act of bankruptcy: by which it is plain, that bare arreſt and putting in bail, are not conſidered as acts that hurt a man's credit.

The act of parliament muſt mean, that where there is a lying in priſon for two months upon the arreſt, the bankruptcy ſhall not be from the end, but the beginning of the two months; *id eſt*, from the arreſt.

Upon the whole, I am of opinion, that as to ſuch payments as were made between the arreſt and the ſurrender, they are good payments to the defendant; and that the plaintiff ſhall take a verdict for eighteen pounds, eighteen ſhillings, paid after the bankrupt's ſurrendering himſelf to priſon.

Mr. Juſtice *Abney*. I am of the ſame opinion; and that the caſe of *Duncomb* and *Walter* is, beſides the books already cited, reported in *Skinner*, 22, 87; and there the judges of this court, and of the King's Bench, were unanimous that really to make a man a bankrupt muſt be from an actual lying in priſon, and not upon putting in bail only.

Arreſt is the act of another, and therefore will not make a man a bankrupt; but lying in priſon, abſconding, *&c.* are the party's own acts, and by them he gives evidence of his inability to pay.

Mr. Juſtice *Burnet* was of the ſame opinion.

Mr. Juſtice *Forteſcue* was abſent. *Dav.* 376. *Eaſt.* 17 *Geo.* II. In the Common Pleas. *Tribe* againſt *Webber.*

271. A man was committed by commiſſioners of bankruptcy, and the concluſion of the commitment was, *until he conform himſelf unto our authority, and be thence delivered by due courſe of law.*

Cooper and *Northey* for the priſoner. That the concluſion of the commitment ought to have been, until he ſhall ſubmit himſelf to be examined upon interrogatories, according to the intent and meaning of the act; for, being a ſpecial authority to commit, the words muſt be purſued. Here the commiſſioners required to tell all that he knew touching the eſtate of the bankrupt; and, that being too general, they aſked, When, and in what manner, did you aid and aſſiſt in embezzleing the eſtate of the bankrupt? Not, Whether he did aid or aſſiſt? And for not anſwering they committed him.

Holt, chief juſtice. The general queſtions may be well: if he cannot recollect any thing, it is a fair queſtion. Now, if any of the queſtions were fair, there was juſt cauſe to commit for not anſwering them. He is not to anſwer any thing criminal; 'tis criminal to imbezzle any goods *after* the bankruptcy but not *before*. But hold: If a man has intermedled honeſtly and fairly, without craft, he may, and ought, to diſcover it, to avoid the penalty. It may be, the word *embezzlement* may be too hard; but there is latitude enough for other queſtions tantamount. But here the priſoner muſt be diſcharged, for the concluſion of the commitment is ill. So, where juſtice committed overſeers, until they ſhould be delivered by due courſe of law, where the ſtatute ſays, *until they account*, we diſcharge them. Here the concluſion ſhould have been, *till he ſhall ſubmit, and be (or to be) examined touching the premiſes*; or, as Mr. *Cooper* obſerves, upon interrogatories.

Note.

Note. Something was ſaid at the bar of an action of falſe impriſonment.

Holt, chief juſtice. There is no colour for an action of falſe impriſonment, where an officer commits ſuch a miſtake or ſlip, *Comb.* 390. *Mich.* 8 *Wil.* III. *Bracey*'s caſe.

272. *J.* brings his *habeas corpus* : the return was, that he was committed by *J. S. J. N. T. K.* to whom and others a commiſſion of bankruptcy was awarded, *for refuſing to anſwer a queſtion put to him concerning the bankrupt's eſtate*; and ſo *commiſſus fuit in cuſtodia*, by a warrant to the officer *virtute commiſſionis prædicte, & hæc eſt cauſa captionis, ſeu detentionis*, &c.

The counſel for the priſoner took three exceptions to the return.

Firſt, That there did not appear a ſufficient authority; for the commiſſion is ſaid to be granted to them and others, and then they could not act without the reſt, for the return does not expreſs any *quorum*, &c. in the commiſſion.

Secondly, inſtead of *commiſſus in cuſtodia*, it ought to be *captus*, for that is the uſual form : for this is as if the commitment were by the officer that makes the return.

Thirdly, *hæc eſt cauſa captionis*, ſeu *detentionis*, is uncertain ; it ought to be *& detentionis.*

And upon the firſt and laſt exception, the priſoner was diſcharged by the court : but at the ſame time was told by the court, that he muſt anſwer directly to ſuch queſtions as were put to him, in order to the diſcovery of the bankrupt's eſtate ; or elſe he was liable to be committed. 1 *Vent.* 323. *Mich.* 29, *Car.* II. *J*----'s caſe.

273. It was returned on *habeas corpus*, on the plea ſide (and mended *ſedente curia*, and made of the crown ſide) that he was committed in execution of a commiſſion of bankrupts, by *A* and *B*, and others,

on

on 13 *Eliz. cap.* 7, ſect. 2, and it did not appear that *A* and *B* were a majority, or a *quorum*; which, by *Rainsford*, chief juſtice, and *Jones*, juſtice, is ill The earl of *Leiceſter*'s caſe. *Co.* Rep. And the reſt being abſent, he was diſcharged; in regard he did not refuſe to ſwear; but had ſworn, that he had none of the bankrupt, *Thompſon*'s, &c. eſtate, come to his hands; but would not anſwer, whether any of *Thompſon*'s eſtate came to his hands before the commiſſion ſued out, *&c.* having received his own debt before. Nor, *per curiam*, is he compellable to ſwear ſo upon 1 *Jac. cap.* 15, ſect. 10. 3. *Keb. Mich.* 29 *Car.* II. The king againſt *Jeakill.*

274. The defendant being committed by commiſſioners of bankrupt, was brought thither by *habeas corpus*; and, upon debate about the return, it was agreed, that commiſſioners having once examined a man, cannot examine him again, unleſs it be upon a new commiſſion: but quere, if their examination be loſt by fire, *&c.* if there ought, in ſuch caſe, to be a new commiſſion? The king, *v. Ballot. Show* 102. *Eaſt.* 22 *Car.* II. *B. R.*

275. Before the ſtatute of the 5th of *Geo.* II. a bankrupt's wife was not liable to be examined touching the manner of her husband's bankruptcy; and the lord chancellor *Macclesfield* diſcharged the wife of a bankrupt who was committed by the commiſſioners on that account: and the reaſon which he gave why a wife could not be examined touching his bankruptcy, was, becauſe the wife, by the common law, could not be a witneſs for or againſt her huſband; and though the ſtatute of the 21ſt *Jac.* authoriſed the commiſſioners to examine the wife touching any concealments of the goods, effects and eſtate of the bankrupt; yet it did not extend to examine the bankrupt's wife touching his bankruptcy, or whether he had committed any act of bankruptcy, or how, or when, he became a bankrupt.

It

It hath been reſolved by the juſtices, that the wife cannot be produced as a witneſs, either againſt or for her huſband; *quia ſunt duæ animæ in una carne*; and it might be a cauſe of implacable diſcord and diſſention between the huſband and wife. 1 Inſt. 6. b.

The court was moved to know, Whether the wife of a bankrupt can be examined by commiſſioners upon the ſtatute of bankrupts; and they were of opinion, ſhe could not be examined; for the wife is not bound, in caſe of high treaſon, to diſcover her huſband's treaſon, although the ſon be bound to reveal it; therefore, by the common law, ſhe ſhall not be examined. 1 *Brownl.* 47. 1 P. *Wil. Hil.* 1719. *Ex parte* James.

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A bankrupt conforming to the ſtatute 5 Geo. II. ſhall be allowed five pounds *per cent.* out of the neat produce of all the eſtate that ſhall be recovered by his diſcovery, in caſe the ſaid eſtate (after ſuch allowance made) is ſufficient to pay the creditors ten ſhillings in the pound, and ſo as the ſaid five pounds does not amount in the whole to above two hundred pounds. And if the eſtate be ſufficient to pay twelve ſhillings and ſix-pence in the pound, he ſhall be allowed ſeven pounds ten ſhillings *per cent.* ſo as the ſaid ſeven pounds ten ſhillings does not amount in the whole to above two hundred and fifty pounds. And if the eſtate be ſufficient to pay fifteen ſhillings in the pound, then he ſhall be allowed ten pounds *per cent.* ſo as the ſaid ten pounds *per cent.* does not amount to above three hundred pounds. But if the neat produce of the bankrupt's eſtate will not be ſufficient to pay ten ſhillings in the pound, after all charges deducted, then ſuch bankrupt ſhall only be allowed what the commiſſioners and aſſignees ſhall think fit, not exceeding three pounds *per cent.* Par. 88.

The bankrupt ſhall be allowed two ſhillings and ſix-pence *per diem* for attending the aſſignees after certificate ſigned, in order to ſettle accounts. Par. 116.

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A bankrupt not obliged to deliver up his own, or his wife's, or children's neceſſary wearing apparel. Such apparel not liable to ſeizure. Par. 83, 89, 95.

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The perſon of a bankrupt not liable to arreſt for debt, or eſcape-warrant, in going to, ſtaying with, or coming from the commiſſioners or aſſignees, if he attend in obedience to any notice or ſummons from them; but on producing ſuch notice or ſummons he ſhall be diſcharged. And if after ſuch ſummons ſhewn any officer ſhall detain ſuch bankrupt, he ſhall forfeit five pounds *per diem* for the bankrupt's uſe. Par. 86.

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When a commiſſion is iſſued, the commiſſioners ſhall forthwith, after they have declared the perſon a bankrupt, cauſe notice thereof to be given in the London Gazette, and appoint a time and place for the creditors to meet (which meeting for London and the bills of mortality ſhall be at Guildhall) to chooſe aſſignees of the bankrupt's eſtate, at which meetings the commiſſioners ſhall admit the proof of any perſon's debt by affidavit, or (being a quaker) by ſolemn affirmation, and permit any perſon duly authoriſed by letters of attorney from any creditor, (oath or affirmation being made of the due execution thereof) to vote in choice of aſſignees. And the aſſignees ſhall keep books of account, in which they ſhall enter all ſums of money, and other effects, which they ſhall receive out of the bankrupt's eſtate; which books creditors who have proved their debts may inſpect as often as they pleaſe. Par. 106.

No creditor, or other perſon for him, ſhall vote in the choice of aſſignees, whoſe debt amounts not to ten pounds or upwards. Par. 107.

The commiſſioners may immediately appoint aſſignees, who may be removed at the meeting of the creditors, if the major part of them think fit; and the aſſignee ſo removed ſhall deliver up and aſſign all the effects of the bankrupt, which ſhall be come into their hands, to the aſſignees ſo choſen by the creditors; and

and all ſuch effects ſhall be veſted in ſuch new aſſignees. And if any of the firſt aſſignees ſhall by the ſpace of ten days after notice of the choice of ſuch new aſſignees, and of their conſent to accept ſuch aſſignment, refuſe or neglect to make ſuch aſſignment and delivery, every ſuch aſſignee ſhall forfeit two hundred pounds, to be divided among the creditors, and recovered by action of debt, &c. by ſuch perſons as the commiſſioners ſhall appoint, with full coſts. Par. 110, 111.

The aſſignees are to reimburſe the petitioning creditors all coſts and charges they have been at in ſueing out the commiſſion out of the firſt monies or effects of the bankrupt, that ſhall come into their hands. Par. 105.

If after any aſſignment made purſuant to the choice of the creditors, it ſhall be found neceſſary to vacate ſuch aſſignment, the lord chancellor, upon the petition of any creditors, may make ſuch order therein as he ſhall think reaſonable. And if a new aſſignment be ordered to be made by the creditors, the debts, effects, and eſtate of the bankrupt ſhall be veſted in ſuch new aſſignees, who may ſue for the ſame in their own names, diſcharge any action, &c. Par. 111.

The commiſſioners ſhall give notice in two London Gazettes, immediately following the removal of ſuch aſſignees, and the appointment of new ones, that ſuch aſſignees are removed, and ſuch others appointed in their ſtead. *Ibid.*

Before the choice of aſſignees the major part in value of the creditors ſhall, if they think fit, direct where and with whom the monies ariſing from the bankrupt's eſtate ſhall be depoſited, till a dividend is made thereof; and every aſſignee, as often as an hundred pounds come into his hands, ſhall conform to ſuch order and direction, Par. 112.

The aſſignees ſhall ſome time after the expiration of four months, and within twelve months from the time of iſſuing a commiſſion, cauſe 21 days public notice to be given in the Gazette, of the time and place the commiſſioners intend to meet, and make a dividend of the bankrupt's eſtate (which meeting for the city of London and bills of mortality ſhall be at Guildhall) when and where creditors, who have not proved their debts, may prove the ſame. And the aſſignees ſhall deliver to the commiſſioners and creditors a fair account of the bankrupt's eſtate, and may be examined upon oath, or (being quakers) upon ſolemn affirmation touching the ſaid accounts. They ſhall be reimburſed their expences, and have a reaſonable allowance for their trouble. And the commiſſioners ſhall order ſo much of the neat produce of the bankrupt's eſtate, as appears to be in the hands of the aſſignees, to be divided amongſt ſuch of the creditors as have proved their debts; which order ſhall be in writing under the hands of the commiſſioners, to be filed among the proceedings of the ſaid commiſſion, and a duplicate thereof

delivered to each of the aſſignees, containing an account of the time and place of making ſuch diſtribution, the ſum total of all the debts proved under the ſaid commiſſion, the ſum total of all the money remaining in the hands of the aſſignees, and how much in the pound is then ordered to be paid to every creditor. And the aſſignees, purſuant to ſuch order, are forthwith to make a dividend accordingly, and take receipts in a book to be kept for that purpoſe, from each creditor; which ſaid order and receipt ſhall be an effectual diſcharge to every aſſignee for ſo much as he ſhall pay purſuant thereunto. Par. 113.

The aſſignees may, (with the conſent of the major part in value of the bankrupt's creditors) ſubmit matters in diſpute to arbitration. Par. 114.

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To deliver up to the aſſignees all their books of accounts, writings, &c. not before delivered to the commiſſioners. Par. 86.
Not in priſon, or cuſtody, to attend aſſignees to aſſiſt them in making out the accompts of their eſtate and effects. *Ibid.*
Have liberty to inſpect their books and accounts in preſence of one or more of the aſſignees, and make extracts from them in order to their making a full and true diſcovery of their effects; and to be free from all arreſts or reſtraint during the time of their examination, if not in cuſtody at the ſame time of their ſurrender. Par. 86.
If in cuſtody at the time of iſſuing the commiſſion, and can be brought before the commiſſioners to be examined, the expence ſhall be paid by the aſſignees; but if under execution, the commiſſioners are to attend them in priſon. Par. 87.
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Diſcharge of Bankrupts.

NO bankrupt whatſoever, ſhall receive any benefit by this act, who, within a year before his becoming a bankrupt, has loſt the

the ſum of one hundred pounds by contracts for the ſale or purchaſe of any ſtock of any company or corporation, or any ſhares of government or public funds, if the contract was not to be performed within one week after the making ſuch contract; or where the ſtock, ſo bought or ſold, was not actually tranſferred in purſuance of ſuch contract. Par. 93.

If a bankrupt, apprehended within the time limited, ſubmit to be examined, and conform, in all reſpects, to the directions of this act, he ſhall receive the ſame benefit thereby as though he had voluntarily ſurrendered. *Ibid.*

The bankrupt is required, after allowance of his certificate, to attend the aſſignees, in order to ſettle accounts; and if he refuſes to attend, or aſſiſt, as aforeſaid (without good and ſufficient cauſe ſhewn for ſuch neglect or refuſal) he is to be committed to goal without bail. Par. 116.

Bankrupt's Allowances.

Allowed two ſhillings and ſix pence *per diem* for ſuch attendance. *Ibid.*

See Allowances.

BILLS, *&c.*

PERSONS who have ſold goods upon credit, and taken bills, bonds, promiſſory notes, or other perſonal ſecurities, for their money, payable on future days of payment, if commiſſions of bankruptcy be awarded againſt the buyers of ſuch goods, before the money due on ſuch bills, *&c.* is become payable, the perſons ſo giving credit upon good and valuable conſideration; for money, or other thing whatſoever, which ſhall not be due before the time of the buyer's becoming a bankrupt, ſhall be admitted to prove their bills, *&c.* and in like manner as if they had been made payable preſently; and ſhall be intitled to a proportionable ſhare and dividend of ſuch bankrupt's eſtate, in proportion to the other creditors, deducting only a rebate of intereſt, and diſcounting ſuch ſecurities after the rate of five pounds *per cent. per annum*, for what he ſhall ſo receive; to be computed from the payment thereof to the time ſuch debt would have become payable by ſuch ſecurities. Par. 73.

Every bankrupt ſhall be diſcharged from ſuch bond, note, or other ſecurity, and have the benefit of the ſeveral ſtatutes againſt bankrupts, in like manner as if ſuch money had been due before the time of his becoming bankrupt. *Ibid.*

So much of the act of 7 *Geo.* I. *cap.* 31, as diſables any perſon poſſeſſed of ſuch bonds, bills, promiſſory notes, *&c.* from petitioning for, or joining in, any petition for a commiſſion of bankruptcy, is by this act repealed; and it ſhall and may be lawful for any ſuch perſon to petition for, or join in petitioning for, any ſuch commiſſion. Par. 103.

The

The creditors petitioning for a commiſſion, ſhall give bond to the lord-chancellor, in the penalty of two hundred pounds, conditioned for proving their debts, *&c.* *Ibid.*

Bonds. *See* Bills *and* Void Securities.

BOOKS of accompt to be delivered by the bankrupt to the aſſignees, upon oath, or ſolemn affirmation, before a maſter in chancery, or Juſtice of the peace. Par. 86.

Bottomry. *See paragraph* 131.

Broker. *See* Banker.

CERTIFICATE.

NO bankrupt ſhall be entitled to the benefits allowed by this act, unleſs the commiſſioners ſhall certify to the lord chancellor, that he hath made a full diſcovery of his effects, and in all things conformed himſelf to the directions of this act; and that there does not appear to them any reaſon to doubt of the truth of ſuch diſcovery, or that it is not a full diſcovery of all the bankrupt's eſtate and effects; and unleſs four parts in five, in number and value, of the creditors ſhall ſign the certificate, and teſtify their conſent to ſuch allowance and certificate, and to the bankrupt's diſcharge; to be alſo certified by the commiſſioners, who are not to certify, till they have proof by affidavit or affirmation in writing, of the creditors ſigning ſuch certificate, and the power by which any perſon ſhall be authorized to ſign for them; which ſhall be laid before the lord chancellor, *&c.* with the certificate, in order to the allowing and confirming the ſame: and unleſs the bankrupt make oath or affirmation, that ſuch certificate and conſent were obtained fairly, and without fraud; and unleſs ſuch certificate, after ſuch oath or affirmation, be allowed by the lord chancellor, or by two of the judges at the courts at Weſtminſter, to whom the conſideration thereof ſhall be referred by the lord chancellor: and the creditors ſhall, if they think fit, be heard againſt the making ſuch certificate and the confirmation thereof. Par. 91.

Every bond, bill, or other ſecurity, given by any bankrupt to the uſe of any creditor, as a conſideration to perſuade him to ſign ſuch allowance or certificate, ſhall be void. 92.

All perſons declared bankrupts on or before May, 1729, who had failed to obtain their certificates allowed within the time limited by a clauſe in an act paſſed in the third year of his late majeſty's reign, and who had nevertheleſs been conformable to the ſaid act in other particulars, were, upon obtaining certificates of their conformity any time before the twenty-fifth of March, 1733, to be entitled to all the privileges contained in the

the act of 5 *Geo.* I. *cap.* 24, and to have their certificates confirmed. Par. 127.

A bankrupt having his certificate allowed, and having ſlipped his time of *pleading* at law, to a debt precedent to the bankruptcy, is not to be relieved in equity. Par. 240.

Where a bankrupt, after certificate allowed, is ſued for a debt due before his bankruptcy, the court, on the circumſtances of the caſe, will relieve, though it will not relieve on a matter purely of miſpleading. Par. 241.

A creditor petitions againſt the allowance of a bankrupt's certificate: upon which the bankrupt gives him a bond for payment of his whole debt, in conſideration of withdrawing his petition. Equity will not relieve againſt this bond. Par. 242.

See paragraph 243, 244, 245.

Chancellor.

MAY enlarge the time for bankrupt's ſurrendering. Par. 85.

Lord chancellor may vacate the firſt aſſignment of the bankrupt's eſtate, *&c.* upon petition of any creditors; or make ſuch order therein as he ſhall think reaſonable. Par. 111.

The lord chancellor ſhall appoint a place where all proceedings of a commiſſion ſhall be entered of record, and a perſon to enter the ſame. Par. 121.

Commiſſion of Bankrupts.

TO be ſued out within five years after the perſon becomes a bankrupt. Par. 47.

No commiſſion ſhall be awarded againſt any perſon upon the petition of one or more creditors, unleſs the ſingle debt of the petitioner do amount to one hundred pounds, or upwards; or the debt of two creditors to one hundred and fifty pounds, or upwards; or the debt of three or more creditors to two hundred pounds, or upwards: and the petitioning creditors ſhall, before the ſame be granted, give bond to the lord chancellor, in the penalty of two hundred pounds, conditioned for proving their debts, and the party a bankrupt at the time of taking out the commiſſion; and the petitioners ſhall make oath, or (being quakers) ſolemn affirmation, in writing, before a maſter in chancery, of the truth and reality of their debts; which affidavit ſhall be filed by the proper officer: and, if ſuch debts ſhall not appear to be due, or the party ſhall not be proved a bankrupt, but that ſuch commiſſion was taken out fraudulently or maliciouſly, the lord chancellor, on the petition of the party grieved, may order ſatisfaction to be made for the damages by him ſuſtained; and, for the better recovery thereof, may aſſign the bond to the party petitioning, who may ſue the ſame in his own name. Par. 103.

Commiſſions of Bankrupt ſuperſeded.

IF any bankrupt, after a commiſſion is iſſued out againſt him, ſhall pay to the perſons who ſued out the ſame, or deliver any goods, or give other ſatisfaction for his debt, whereby ſuch perſon ſhall privately receive more in the pound than the other creditors, ſuch payment, &c. ſhall be deemed ſuch an act of bankruptcy, whereby ſuch commiſſion ſhall be ſuperſeded; and the lord chancellor may award, to any creditors petitioning, a new commiſſion: and the perſons taking ſuch goods, or other ſatisfaction, ſhall pay back and deliver up the ſame, or the full value, to ſuch perſons as the commiſſioners acting under ſuch new commiſſion ſhall appoint, in truſt for the other of the bankrupt's creditors. Par. 104.

The charge of iſſuing commiſſions to be paid by the aſſignees. Par. 105.

No commiſſion of bankrupt ſhall abate by the death of his majeſty, his heirs, or ſucceſſors; and if it be neceſſary to renew any commiſſion by reaſon of the death of the major part of the commiſſioners, or for any other cauſe, only half fees ſhall be taken. Par. 125.

Commiſſions, and all proceedings thereon, to be entered of record.

See Record.

Commiſſioners.

TO be choſen by the lord chancellor. Par. 6.

Have authority to impriſon the body of the bankrupt, and alſo to cauſe his lands, goods, &c. to be viewed, appraiſed, and ſold, for the uſe of his creditors. Par. 6.

Are obliged to declare to the bankrupt, how they have diſpoſed of his effects; and alſo to make payment of the overplus, if there be any, to the bankrupt, his heirs, or executors. Par. 8.
Like clauſe in the act of 1 Jac. I. *cap.* 15. Par. 31.
To award five proclamations upon five market days at or near the place the bankrupt commonly lived, commanding him forthwith to appear, &c. Par. 13.

The commiſſioners to appoint three ſeveral meetings within the time limited for bankrupt to ſurrender himſelf; the laſt of which ſhall be on the forty-ſecond day, by this act limited for the bankrupt's appearance. Par. 84.

Are to attend bankrupts, if under execution, in priſon. Par. 87.

To certify to the lord chancellor, in writing under their hands and ſeals, when a perſon has conformed himſelf to the directions of the act. Par. 91.

See Certificate.

Have

Have power to examine bankrupts as well by word of mouth as by interrogatories in writing; and alſo every other perſon ſummoned before them, touching the trade and effects of ſuch bankrupts; and may commit them to priſon upon non-compliance. Par. 23, 97.

See Witneſs, Impriſonment.

To give notice in the London Gazette when a perſon is declared a bankrupt, and appoint a time and place for the creditors to meet and prove their debts, chooſe aſſignees, &c. Par. 106.

See Aſſignees.

May appoint aſſignees, who may be diſplaced at the meeting of the creditors. Par. 110.

To give notice in the London Gazette of the removal of the former aſſignees, and the appointment of new ones. Par. 111.

May ſend their warrant to any goaler, to deliver up the body of a bankrupt in his cuſtody to the perſons named in ſuch warrant; and alſo to ſeize any goods or effects of the bankrupt which ſhall be then in his cuſtody, or in the cuſtody of any other perſon, or in any priſon whatſoever. Par. 95.

See Impriſonment, Seizure.

Commiſſioners are impowered to adminiſter an oath, or ſolemn affirmation, to any perſon authorized by letter of attorney from any creditor, touching the due execution thereof; and are to permit ſuch perſons, ſo authorized, to vote in the choice of aſſignees. Par. 106.

To aſſign the bankrupt's eſtate to the aſſignees choſen by the majority in value of the creditors. Par. 106.

See Aſſignees.

To any action brought againſt them for any thing done in purſuance of this act, may plead the general iſſue, and give this act, and the ſpecial matter in evidence. Par. 32.

May proceed in execution upon the bankrupt's effects, notwithſtanding the death of the bankrupt. *Ibid.*

May break open the houſe of a perſon declared a bankrupt. Par. 41.

Have power to ſend for, and examine upon oath, or otherwiſe, any perſons ſuſpected of concealing any of the bankrupt's effects, or of being indebted to him. Par. 9.

Not allowed money for eating, drinking, &c. out of the bankrupt's eſtate. Any commiſſioner offending againſt this clauſe, to be diſabled from ever acting as a commiſſioner. Par. 122.

See Allowances, Diſability.

No commiſſioner capable of acting as ſuch till ſworn. Par. 123.

Commitment,

BY commiſſioners of bankrupt. Par. 271, 272, 273, 274.

Compoſition,

WITH creditors. Par. 196, 198.

Concealers of Bankrupt's Eſtate, &c.

PERSONS ſuſpected of concealing any of the bankrupt's effects, or of being indebted to him, may be ſent for and examined by the commiſſioners, upon oath, or otherwiſe; and if upon examination they refuſe to declare the whole truth, on proof thereof made before the commiſſioners, they are to forfeit double the value of ſuch goods and effects ſo concealed. Par. 9.

Refuſing to appear upon commiſſioners ſummons, or to anſwer to interrogatories, to be committed to priſon without bail, &c. till they ſubmit as aforeſaid. Par. 26.

Convicted of perjury, to incur and ſuffer all the pains and penalties limited by the ſtatute of 5 Eliz. made concerning perjury. Par. 27.

Every perſon who has accepted of any truſt, and ſhall conceal any eſtate, real or perſonal, of any perſon becoming bankrupt; and ſhall not, forty-two days after iſſuing of the commiſſion, and notice thereof, diſcover ſuch truſt and eſtate in writing to one or more of the commiſſioners, and ſubmit to be examined by them, and truly diſcover the ſame, ſhall forfeit one hundred pounds, and double the value of the eſtate concealed, for the uſe of the creditors; to be recovered by an action of debt in the name of the aſſignees; and coſts ſhall be allowed to either party as in other caſes. Par. 102.

Conſideration.

EVERY bond, bill, note, or other ſecurity, given by a bankrupt to any creditor, as a conſideration to induce him to ſign the certificate, to be void. Par. 92.

Conſignment. *See* Factor.

Copyhold.

A Mortgage of copy-hold land to B, but the ſurrender not being preſented within the time limited by the cuſtom, became void. Afterwards B becomes bankrupt. On a bill by B againſt the aſſignees, this defective ſurrender was made good. Par. 225.

See Void Securities.

Conſtruction.

Conſtruction. *See* Statutes.

Creditors,

IF not fully ſatisfied, or paid, have their remedy againſt the bankrupt for the remainder of their debts, in the ſame manner as they ſhould have had before the making this act. Par 14.

Any creditor may, within four months after commiſſion iſſued, partake and join with the other creditors for the ſatisfaction of his debt, provided he contributes to the charges of the ſaid commiſſion; otherwiſe to be excluded. Par. 20.

May ſue for, and recover, any debt aſſigned to him by the commiſſioners, in the ſame manner as the party himſelf might have done. Par. 29.

May be heard againſt making and confirming the bankrupt's certificate. Par. 91.

Creditors petitioning for a commiſſion, to give bond to the lord chancellor, conditioned to prove their debts and the party a bankrupt. Par. 103.

Petitioning creditors to be reimburſed their expences of ſuing out commiſſions by the aſſignees. Par. 105.

May prove their debts under a commiſſion without paying contribution-money. *Ibid.*

No creditor to vote in the choice of aſſignees; whoſe debt amounts not to ten pounds. Par. 106.

The creditors may appoint where the effects of the bankrupt ſhall be depoſited till a dividend is made thereof. Par. 113.

Creditors for and in reſpect of goods really and *bona fide* ſold to ſuch bankrupt, or for or in reſpect of any bill or bills of exchange really and *bona fide* drawn, *&c.* ſhall not be liable to refund or repay to the aſſignee or aſſignees of ſuch bankrupt, *&c.* before ſuch time as the perſon receiving ſhall have notice that he is become a bankrupt. Par. 139.

An aſſignee, or indorſee, of a bankrupt's notes at an under value, is a creditor for the full ſums of the notes, and may ſue out a commiſſion as a creditor for ſuch full ſums: *ſecus*, of an aſſignee of a bond, or where the indorſement of the note is ſubſequent to the bankruptcy. Par. 219.

A draws a bill payable to B on C, in Holland, for one hundred pounds; C accepts it: afterwards A and C become bankrupts, and B receives forty pounds of the bill out of C's effects; after which, he would come in as a creditor for the whole one hundred pounds out of A's effects. B permitted to come in as a creditor for ſixty pounds. And the maſter directed to ſee whether the other forty pounds was paid out of A's effects in C's hands, or out of C's own effects. If the latter, then C, is a creditor for this forty pounds alſo: but if out of A's effects, then the forty pounds out of the one hundred pounds is paid off. Par. 220.

A gives

A gives a promiſſory note for two hundred pounds, payable to B, or order. B endorſes it to C, who endorſes it to D. A, B, and C, become bankrupts, and D receives five ſhillings in the pound, on a dividend made by the aſſignees againſt A. D ſhall come in as a creditor for one hundred and fifty pounds only, out of B's eſtate; and if B paid contribution-money for more than one hundred and fifty pounds, it ſhall be returned. Par. 221.

Bill againſt the commiſſioners and aſſignees of the ſtatute of bankruptcy to be let into the ſtatutes, paying contribution-money. Decreed accordingly. Par. 222.

An agreement between the London and the country creditors of a bankrupt, decreed to be performed. Par. 223.

A lends money to B and C on bond. B becomes bankrupt, and his eſtate aſſigned by the commiſſioners. A ſues C, and takes him in execution on a *ca. ſa.* and afterwards conſents to his eſcape: yet A ſhall come in as a creditor of the bankrupt for a moiety of his remaining debt. Par. 239, in page 394.

Though a creditor comes into a commiſſion of bankruptcy, and proves his debt, and is prevailed on by the aſſignees (being informed that otherwiſe he ſhould loſe his debt) yet, if the bankrupt has no eſtate, the creditors may take the bankrupt in execution, if he will wave any benefit of the ſtatute. Par. 248.

Creditor coming in under a commiſſion of bankruptcy, though only to prove his debt, and oppoſe the bankrupt's obtaining his certificate, yet he ſhall not ſue the bankrupt at law, unleſs he will wave all benefit of the commiſſion, not only as to the dividends, but as to his voting againſt the bankrupt's gaining his certificate. Par. 249.

Credit. *See* Bills, Bonds, *&c.*

Credit Mutual. *See* Mutual Debts.

Days.

Any creditor, within four months after commiſſion iſſued, is at liberty to come in and join with the reſt of the creditors for the ſatisfaction of his debt. Par. 20.

The bankrupts allowed forty-two days to appear in. Par. 83.

The lord chancellor may enlarge the time for the bankrupt's ſurrendering, not exceeding fifty days, to be computed from the end of the ſaid forty-two days; ſo as ſuch order be made at leaſt ſix days before the time on which ſuch perſon was to ſurrender. Par. 85.

Perſons who have accepted any truſt, or ſhall protect or conceal any eſtate, real or perſonal, of a bankrupt, ſhall diſcover ſuch eſtate in writing to one of the commiſſioners, within forty-two days after the commiſſion ſhall be iſſued, and notice given thereof to ſuch perſons. Par. 102.

See Concealers of Bankrupt's Effects.

See Diſcoverers, &c.

Bankrupt, after his certificate confirmed, ſhall attend the aſſignees, *&c.* and ſhall be allowed two ſhillings and ſixpence *per diem* for ſuch attendance. Par. 116.

The aſſignees appointed by the commiſſioners ſhall, within ten days after notice, deliver up to the aſſignees, choſen by the creditors, all the effects of the bankrupt that ſhall come into their hands. Par. 110.

See Aſſignees.

Dealing in the Commiſſion.

WHAT is meant thereby. Par. 265.

Debts.

WHERE there are mutual debts between the bankrupt and any other perſons, contracted at any time before the perſon became a bankrupt, the commiſſioners ſhall ſtate the account between them, and one debt may be ſet againſt the other; and no more ſhall be paid on either ſide than what ſhall appear to be due on the balance of the account. Par. 108.

Debts Fictitious, or Pretended. *See Par.* 132.

Deſcription of Bankrupts. *See* Bankrupts.

Deviſe,

TO bankrupt's wife. Par. 204, 205, 206.

Diſability.

IF any commiſſioner ſhall order any expence to be made for eating or drinking at any meeting, out of the bankrupt's eſtate, or at the charge of the creditors; or take above the ſum of twenty ſhillings for each meeting, he ſhall be diſabled for ever to act as a commiſſioner in that or any other commiſſion founded on the ſtatutes concerning bankrupts. Par. 122.

Diſcharge of Bankrupts.

ALL perſons conforming to the ſtatutes concerning bankrupts, ſhall be diſcharged from all debts by them owing at the time of

of their becoming bankrupts; but their future effects ſtill liable, Par. 88.

See Bankrupt, Effects.

Any of the judges of the court where judgment has been obtained againſt a bankrupt before his certificate was allowed and confirmed, taken in execution, and detained in priſon, may, on ſuch bankrupt's producing his certificate, allowed and confirmed, order any ſheriff, bailiff, or other goaler, having a bankrupt in cuſtody by virtue of ſuch execution, to diſcharge ſuch bankrupt out of cuſtody without fee; and ſuch ſheriff, *&c.* is to diſcharge him accordingly, and is indemnified from any action for an eſcape in ſo doing. Par. 95.

Diſcoverers of Bankrupt's Eſtate.

EVERY perſon who ſhall, at any time after the time allowed to a bankrupt to ſurrender, voluntarily diſcover before the commiſſioners any part of the bankrupt's eſtate, ſhall be allowed five pounds *per cent.* out of the neat produce of what ſhall be recovered by ſuch diſcovery; to be paid him by the aſſignees, Par. 101.

Diſtribution of Bankrupt's Eſtate. *See Paragraphs* 246, 247.

Dividends, how to be made. *See* Aſſignees.

FINAL Dividend to be made in eighteen months. Par. 117.

See Aſſignees.

Drover of Cattle. *See* Farmer.

Eaſt-India Company.

NONE that adventure in the Eaſt-India or Guinea company, or put their money into ſtock for carrying on the fiſhing trade, and receive their dividend in goods which they ſell or exchange, ſhall, by reaſon thereof only, be liable to the ſtatutes of bankrupts. Par. 49.

No members of the Eaſt-India company ſhall, in reſpect of his ſtock therein only, be liable to be a bankrupt within the meaning of any of the ſtatutes concerning bankrupts. Par. 55.

Sir John Wolſtenholme, for being an adventurer in this company, was, by a verdict given in the King's Bench, *anno* 1653, adjudged liable to a commiſſion of bankrupt; which verdict was made void by this act. Par. 49.

But no ſale for diſtribution of the eſtate of the ſaid Sir John Wolſtenholme made by the commiſſioners, or any claiming under them, ſhall be hereby impeached. *Ibid.*

Effects. See Eſtate.

Embaſſador.

NO merchant, or other trader, within the deſcription of any of the ſtatutes againſt bankrupts, who ſhall put himſelf into the ſervice of any embaſſador, or other public miniſter of foreign princes or ſtates, ſhall have any manner of benefit by the act for preſerving the privileges of embaſſadors. Par. 60.

Equity.

NO ſuit in equity ſhall be commenced without the conſent of the major part in value of the creditors. Par. 118.

Eſtate, Effects, &c.

ANY eſtate or effects that ſhall deſcend, or by any means come to a bankrupt, before his debts are fully ſatisfied and paid, or otherwiſe agreed for, ſhall be expended and diſpoſed of for the payment of the ſaid debts. Par. 15.

Any lands that have been aſſured by a bankrupt before he became bankrupt, ſhall not be affected by this act, provided ſuch aſſurance be made, *bona fide*, and not to the uſe of the bankrupt, or his heirs; and provided the parties to whom ſuch aſſurance was made, be not privy to any fraudulent purpoſe of the bankrupt to deceive his creditors. *Ibid.*

Any eſtate or effects in poſſeſſion of a bankrupt, whereof he is the reputed owner at the time of his becoming a bankrupt, although before aſſigned to other perſons upon good conſideration) ſhall be ſold for the uſe of the creditors. Par. 44.

Any eſtate, or lands, in remainder or reverſion, belonging to a bankrupt, except where the reverſion is in the king, &c. to be diſpoſed of for the benefit of his creditors. *Ibid.*

Conditional eſtates, granted or conveyed by a bankrupt, may be redeemed by the commiſſioners before the time of the performance of ſuch conditions, and ſold for the uſes aforeſaid. Par. 46.

All the eſtate and effects of a bankrupt, condemned as a felon, ſhall be divided among the creditors ſeeking relief under a commiſſion of bankruptcy. Par. 83.

No perſons diſcharged by this act, or any act for the relief of inſolvent debtors, after the twenty-fourth of June, 1732, ſhall be liable to arreſt or impriſonment: but the future eſtate and effects of ſuch perſons, ſhall remain liable to their creditors, as before, (the tools of trade, neceſſary houſhold goods, and wearing apparel excepted) unleſs the eſtate of ſuch perſons, when under a commiſſion of bankruptcy, was ſufficient to pay their creditors fifteen ſhillings in the pound. Par. 90.

Evidence. *See* Record.

Expences. *See* Allowances, Commiſſioners, Diſability.

Extent. *See Paragraphs* 43, 224.

Factor. *See* Banker. *And ſee Paragraphs* 267, 268, 269.

Farmer.

NO farmer, grazier, or drover of cattle, or receiver-general of taxes granted by parliament, ſhall be entitled, as ſuch, to the benefits of this act, or be deemed a bankrupt within this or any of the ſtatutes concerning bankrupts. Par. 120.

Fees. *See* Allowances, Commiſſioners, Diſability.

THE lord chancellor ſhall appoint ſuch fees to be paid to the perſon by him appointed to enter of record the proceedings on commiſſions of bankrupt, as he ſhall think reaſonable, not exceeding what is uſually paid in the like caſes. Par. 121.

Bankrupts in cuſtody on execution to be diſcharged without fee. Par. 94.

See Diſcharge of Bankrupts.

Bills of fees for iſſuing any commiſſion of bankrupt, ſhall be ſettled by a maſter in chancery, who ſhall receive, for ſettling the ſame, twenty ſhillings, and no more. Par. 126.

Felony.

IF any perſon who, ſince the fourteenth day of May, 1729, became, or hereafter ſhall become, bankrupt; and againſt whom a commiſſion hath, or hereafter ſhall iſſue, whereon he ſhall be declared a bankrupt, ſhall not, within forty-two days after notice thereof in writing left at his place of abode, and notice in the London Gazette of the time and place of meeting of the commiſſioners, ſurrender himſelf to them, and ſubmit to be examined on oath, or, if a quaker, upon his ſolemn affirmation, and conform himſelf to the ſeveral ſtatutes concerning bankrupts; and, upon ſuch examination, diſcover how, and upon what conſideration, he hath diſpoſed any of his goods or eſtate, and all books, papers, and writings relating thereto, of which he, or any perſon in truſt for him, was poſſeſſed at the iſſuing out of the commiſſion; and deliver up to the commiſſioners all ſuch his goods, eſtate, *&c.* books, *&c.* as at his examination

ſhall be in his poſſeſſion (his, and his wife's, and childrens, wearing-apparel only excepted), ſuch bankrupt, in caſe of wilful omiſſion of any of the premiſſes, or in caſe he ſhall remove, conceal, or imbezzle any part of his eſtate, real or perſonal, to the value of twenty pounds, or any books or writings relating thereto, with an intent to defraud his creditors, and being thereof lawfully convicted, ſhall be deemed and adjudged guilty of felony, and ſuffer as a felon, without benefit of clergy. Par. 83.

Foreigners.

TO be ſubject to, and have the ſame benefit from the ſtatutes made concerning bankrupts, as the natural born ſubjects of this kingdom. Par. 48.

Forfeiture.

THE perſon of a bankrupt not liable to arreſt; and if an officer detains him, he ſhall forfeit to him five pounds a day. Par. 86.

Goaler ſuffering a bankrupt, or other perſon committed by the commiſſioners, to eſcape, or go without the walls of the priſon, forfeits five hundred pounds to the uſe of the creditors. Par. 99.

Goaler refuſing, on requeſt of a creditor, to produce and ſhew to him a bankrupt, or ſuch other perſon in his cuſtody, forfeits one hundred pounds for the uſe of the creditors. Par. 100.

Perſons having accepted any truſt, and concealing of any bankrupt's eſtate, and not diſcovering the ſame within forty-two days after a commiſſion iſſues, ſhall forfeit one hundred pounds, and double the value of the eſtate concealed for the uſe of the creditors. Par. 102.

The aſſignees choſen by the commiſſioners, refuſing to deliver and aſſign to the aſſignees choſen afterwards by the creditors, all the eſtate and effects of the bankrupt which ſhall be come to their hands; every ſuch aſſignee ſhall forfeit two hundred pounds for the uſes aforeſaid. Par. 110.

Any creditor privately receiving of a bankrupt any goods or ſecurity, whereby he ſhall have more in the pound than the other creditors, in conſideration of ſuing out a commiſſion, ſhall forfeit the whole. Par. 104.

Fraudulent Aſſignment. *See Paragraph* 270.

Frau-

Fraudulent Deed. *See Par.* 203.

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Future Eſtate.

OF the bankrupt liable to his debts. Par. 260, 261, 262, 263.

Gaming.

Nothing in this act ſhall extend to grant any privilege to a bankrupt who has loſt in one day the value of five pounds, or in the whole the value of one hundred pounds within twelve months next preceding his becoming a bankrupt, in playing at cards, dice, tables, tennis, bowls, ſhovelboard; or by cock-fighting, horſe-races, or any other paſtime or game whatſoever; or by bearing a part in the ſtakes or wagers, or by betting on the ſides of ſuch as do play, act, ride, or run, as aforeſaid. Par. 93.

Goods. *See* Eſtate.

Graſier. *See* Farmer,

Guildhall.

Appointed for the meeting of the commiſſioners and aſſignees, *&c.* for the city of London and bills of mortality. Par. 113.

Habeas Corpus. *See* Impriſonment, Witneſs.

Impriſonment.

Upon certificate, under the hands and ſeals of the commiſſioners, that a perſon is proved a bankrupt, the judges of the courts of Weſtminſter, and all the juſtices of peace are to grant their Warrant for apprehending ſuch perſon, and to commit him to the goal of the county where taken, there to remain till releaſed by the order of the commiſſioners, by warrant under their hands and ſeals. The goaler is required to receive ſuch perſon into his cuſtody, and forthwith to give notice thereof to one of the commiſſioners, who are to ſend their warrant for the delivering of ſuch bankrupt to the perſons authoriſed thereby to convey him to them to be examined. Par. 26, 95.

Perſons ſummoned to appear before the commiſſioners to be examined as witneſſes, and neglecting or refuſing to appear; or appearing, refuſe to be ſworn (or if quakers) to take the affirmation; or being ſworn, *&c.* refuſe to anſwer, the commiſſioners

may commit ſuch perſons to priſon without bail or mainprize, till they ſubmit to anſwer upon oath, &c. Par. 97.
See Witneſs.

If any goaler wilfully ſuffer a bankrupt or other perſon ſo committed to his cuſtody, to eſcape or go without the walls of the priſon, till diſcharged, he ſhall forfeit five hundred pounds for the uſe of the creditors. Par. 99.

The goaler, on requeſt of any creditor who hath proved his debt, and ſhall produce a certificate thereof under the hands of the commiſſioners, ſhall forthwith ſhew the perſon ſo committed to him, to ſuch creditor; which if he refuſe to do, he ſhall forfeit one hundred pounds, to be recovered by action of debt in any of the courts of record in Weſtminſter, in the name of the creditor requeſting ſuch ſight of ſuch priſoner; which forfeiture ſhall be divided amongſt the bankrupt's creditors. Par. 100.

If a bankrupt, after his certificate ſigned and confirmed, ſhall, on reaſonable notice given him, neglect or refuſe to attend the aſſignees in order to ſettle accounts between him and his creditors, or to attend any court of record to be examined touching the ſame, on proof thereof made by the aſſignees before the commiſſioners, theſe laſt are to iſſue their warrant for apprehending ſuch bankrupt, and commit him to the county goal without bail or mainprize, till he ſubmit to be examined, and duly conform to the ſatisfaction of the ſaid commiſſioners, and be by them, or by ſpecial order of the lord chancellor, or otherwiſe by due courſe of law diſcharged; and the goaler ſhall keep ſuch bankrupt in cloſe cuſtody within the walls of the priſon till diſcharged, under the pains and penalties before mentioned for ſuch gaoler's ſuffering ſuch priſoner to eſcape and go at large. Par. 116.

Every perſon that ſhall wittingly conceal or receive a bankrupt after he is demanded by proclamation, ſhall ſuffer ſuch penalties by impriſonment as the lord chancellor, &c. ſhall think fit. Par. 13.

If a bankrupt refuſe to be examined, or to anſwer fully to the interrogatories of the commiſſioners, they may commit him to priſon, there to remain till he conforms himſelf. Par. 24.

If any perſon be impriſoned by the commiſſioners for refuſing to anſwer, &c. the commiſſioners are in their warrant of commitment particularly to ſpecify the queſtion or queſtions. Par. 98.

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Joint Commiſſion.

SEPARATE creditors may prove debts under a joint commiſſion. Par. 237, 238.

Joint

Joint Creditors.

MAY prove debts under a ſeparate commiſſion. Par. 236.
May take out a ſeparate commiſſion. Par. 239.

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Judgment.

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Marriage Bonds. *See Par.* 207, 208, 209, 210.

Marriage Contract.

THIS act ſhall give no benefit or advantage to any bankrupt who on marriage of any of his children hath given above the value of one hundred pounds, unleſs he can prove by his books fairly kept, or otherwiſe upon oath, that he had at the time thereof, over and above the value given, in goods, wares, *&c.* or other eſtate real or perſonal, ſufficient to ſatisfy his creditors their full debts. Par. 93.

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Maſters in Chancery.

IMPOWERED to adminiſter oath to the aſſignees. Par. 86.
To the petitioners for a commiſſion of bankruptcy. Par. 103.
To perſons acting by letter of attorney from any creditor. Par. 106.
To ſettle bills of fees. Par. 115.

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Oath.

BANKRUPT's wife to be examined upon oath. Par. 39.
Bankrupt ſhall ſubmit to be examined upon oath, or (being a quaker) on affirmation. Par. 23, 83.
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Proof muſt be made upon oath (either before a maſter in chancery, or before the commiſſioners *viva voce*) of the due execution of a letter of attorney from any creditor, to authoriſe another perſon to vote for him in the choice of aſſignees. *Ibid.*
No commiſſioner capable of acting till ſworn. Par. 123.
The form of the oath. *Ibid.*
Which oath any two of the commiſſioners may adminiſter to the others in the ſame commiſſion named; and they are to keep a memorial thereof ſigned by themſelves, among the depoſitions, and other proceedings on each commiſſion. Par. 124.
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Books of accounts to be delivered to the aſſignees upon oath. Par. 86.
Creditors petitioning for a commiſſion ſhall make oath, or affirmation, in writing, of the truth and reality of their debts. Par. 103.
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Officer, *See* Arreſt.

Partners with Bankrupts.

THE diſcharge of a bankrupt by virtue of any act relating to bankrupts, ſhall not diſcharge any perſon who was his partner in trade at the time he became bankrupt; or who ſtood jointly bound, or had made any joint contract with him for the ſame debt from which he was diſcharged; but notwithſtanding ſuch diſcharge, ſuch partner ſhall ſtand liable. Par. 64.
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Separate creditors allowed to come in under a joint commiſſion againſt two partners. The joint effects to be firſt applied to pay the partnerſhip debts, and then the ſeparate debts. And as to the ſeparate effects, firſt the ſeparate, and afterwards the partnerſhip creditors are to be paid out of the ſame. Par. 232.

Two

Two joint traders becoming bankrupts; firſt there is a joint commiſſion taken out, and commiſſioners aſſign; afterwards, ſeparate commiſſions, and aſſignments made under them. The court held, that the aſſignment of the commiſſioners under the firſt commiſſion, conveyed all the bankrupt's eſtate, both joint and ſeveral; and conſequently that the conveyance under the ſeparate commiſſion was void. Par. 233.

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Any perſon depoſing or affirming that any ſum of money is due to him, which is not really due; or ſwearing, or affirming, that more is due than really is; ſhall ſuffer the pains and penalties of wilful perjury, and forfeit double the ſum demanded, for the uſe of the creditors Par. 109.

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Purchaſers without notice.

EQUITY will not compel a man to diſcover what goods he really bought of the bankrupt after the bankruptcy, and before the commiſſion ſued out, where the party has no notice of the bankruptcy. Par. 251.

A bankrupt whoſe eſtate is in mortgage, conveys the equity of redemption to a third perſon, after an act of bankruptcy, but before the commiſſion and aſſignment. This ſhall not defeat the aſſignees; but where a *bona fide* purchaſer, for valuable conſideration, and without notice, has a conteſt with the aſſignees, this court will not take any advantage from him; therefore will not compel a diſcovery. A commiſſion iſſued is notice of the bankruptcy. Par. 256.

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Receiver General of Taxes. *See* Farmer.

Record.

ON the petition of any perſon claiming an eſtate under any commiſſion, the lord chancellor may order the commiſſion, the depoſitions proving the bankruptcy, the proceedings thereupon, the certificates, and other matters to be entered of record; and in caſe of the death of witneſſes, or if the commiſſion, *&c.* be loſt or miſlaid, a true copy of the record may be given in evidence, and be a full and effectual bar and diſcharge of any action brought by any creditor of a bankrupt for any debt or demand due before the iſſuing of the commiſſion, unleſs the creditor can prove that ſuch certificate was fraudulently obtained. And the lord chancellor ſhall appoint a place near the inns of court where the commiſſions, depoſitions, certificates, *&c.* ſhall be entered of record, where all perſons ſhall be at liberty to ſearch; and ſhall by writing under his hand appoint a perſon, who by himſelf or his deputy (to be appointed likewiſe by the lord chancellor) ſhall enter of record all commiſſions, *&c.* and have the cuſtody of the entries. And the lord chancellor ſhall alſo appoint ſuch fee or reward to be paid to ſuch perſon for his pains, as he ſhall think fit. And ſuch perſon, or his deputy, ſhall continue to enter of record all ſuch matters, *&c.* ſo long as they behave themſelves well; and ſhall not be removed but by order in writing under the hand of the lord chancellor, who, in caſe of death or removal, ſhall appoint another in his room, Par. 121.

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THE commiſſioners may by warrant ſeize the goods, wares, merchandizes, and effects of a bankrupt (his neceſſary wearing apparel, and that of his wife and children only excepted) and all his books, papers, and writings in his own, or in any other's cuſtody, or in any priſon whatſoever. Par. 95.

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South-Sea Company.

NO member of this company ſhall, in reſpect of his being a member, governor, director, or manager thereof, or having any ſtock therein only, or by reaſon of any other matter in this act contained, be liable to be a bankrupt. Par. 62.

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EVERY bond, bill, note, contract, agreement, or other ſecurity given by a bankrupt for the uſe of any creditor, or for the payment of any debt due from ſuch bankrupt at the time of his becoming bankrupt, between that time and his diſcharge, as a conſideration, or with intent to perſwade ſuch creditor to ſign his certificate, ſhall be void, and the money agreed to be paid, ſhall not be recoverable; and the perſon ſued on ſuch bond, *&c.* may plead the general iſſue, *&c.* Par. 92.

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In p. 72, line 1, for 1,665,131 *l.* 12 *s.* 9 *d.* read 16,665,131 *l.* 12 *s.* 9 *d.*
In p. 73, parag. 170, line 6, for 1,000,000 read 10,000,000.
In p. 213, parag. 28, line 1, dele 5 *Eliz.* 9.

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